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# In the Supreme Court of the United States

OCTOBER TERM 1968

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF LOUISIANA, ET AL.

## Brief of the State of Louisiana in Support of its Motion for Entry of Supplemental Decree No. 2; and in Support of its Response and Opposition to the Counter-Motion by the United States; and in Support of Louisiana's Alternative Motion for Entry of Supplemental Decree Number 2

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Part 1
Inland Water Line

## CONTENTS


Page

**STATEMENT OF THE CASE** ..... 1

**ARGUMENT** ..... 4

**PART I**

**THE INLAND WATER LINE SHOULD BE RECOGNIZED AS THE COAST LINE OF LOUISIANA** ..... 5

**I. The Inland Water Line is in Accord with the Policies of this Nation from its Inception** ..... 11

**II. The Inland Water Line is the Outer Limit of Inland Waters in a Jurisdictional Sense** 25

A. Congress Intended That the Inland Waters Mentioned in the Act of February 19, 1895 be Inland Waters in a Jurisdictional Sense and That the Authorized Agent was to Determine Those Waters ..... 25

1. The Congressional Intent ..... 26

2. History of International and Inland Rules Legislation ..... 34

B. Louisiana's Position With Respect To the Inland Water Line Is Consistent With International Law ..... 41

**III. The Congressional Act of February 19, 1895 as Amended, Provided a Definition of Inland Waters, Which Has Been Readopted by Other Congressional Acts, and is the Subject of the Only Decision of this**

Page

**Court Adjudicating the Outer Limit of Inland Waters** ..... 45

**IV. Once the Inland Water Line was Accepted and Approved By the State of Louisiana it Could Not be Changed as a Boundary Without Her Consent** ..... 54

**V. Only the Inland Water Line Will be Consonant With the Express Policy of This Court Relative to the Boundary Established by the Submerged Lands Act** ..... 59

A. Louisiana and California Exhibit Marked Differences in Physical and Economic Coastal Conditions ..... 60

B. Only the Inland Water Line Will Fulfill the Requirement for a Definite and Certain Submerged Land Act Boundary 66

**PART II**

PRELIMINARY REMARKS....

**I. The Basic Framework of Decision** ..... 81

**II. Technical Matters** ..... 86

**III. The Set of 54 Maps** ..... 86

**IV. Lateral Boundaries of Louisiana** ..... 89

**PRINCIPLES AND RULES**

**I. Development of the Interiatnoial Law of Bays** ..... 90

A. The Early Rules for Bays ..... 90

B. The Development of the Ten Mile Rule 97

Page

C. Evolution of tests for determining configuration and characteristics of a bay 105

**II. Bays Under Present Day International Law** ..... 110

A. Bays within Bays ..... 111

B. Application of the rules of the Geneva Convention to various types of indentations ..... 114

1. Indentations across whose mouths a line 24-miles or less in length may be drawn and whose area is as large as or larger than that of a semicircle whose diameter is the line across the mouth ..... 114

2. Indentations which meet the semicircle test at their mouths, but which are wider there than 24 miles ..... 114

3. Indentations meeting the semicircle test which are located within indentations not meeting the semicircle test ..... 115

4. Indentations partially formed by islands ..... 116

C. Selection of Headlands ..... 121

1. Terminology of the Convention .... 121

2. Outermost Headland v. Nearest Closing Point ..... 122

3. Use of Outer v. Inner Headlands.... 123

4. Use of Islands as Headlands ..... 124

Page

5. Use of Low-Tide Elevations as Natural Entrance Points ..... 131

**III. Effect of Islands Fringing the Coast** ..... 131

**IV. Historic Inland Waters** ..... 137

A. The concept of historic title is not restricted in application solely to bodies of water considered to be bays ..... 138

B. The concept of historic title is not founded on a prescriptive title in the sense that long possession legitimates possession which was originally illegal 139

C. The concept of historic title is not "exceptional" so as to require a stringent burden of proof or so as to change the constituent elements necessary for inland waters classification ..... 141

D. The concept of historic title is not "exceptional" in the sense that it represents merely an after thought to or outgrowth of the geometrical tests for bays ..... 143

E. The elements of historic title indicate that the cornerstone of the concept is the "vital interest" of the maritime nation in and to the subject territory ..... 149

1. Exercise of Authority ..... 150

a. A Claim to Exercise Exclusive Rights Within a Certain Sea Area Necessarily Supplies and Involves a Claim to That Area

Page

as Territorial or National Waters ..... 150

b. Is the United States the Only Entity Capable of Activities Which May Evidence Historic Title, or May the Activities of States Within This Union be Considered? ..... 152

2. Continuity of Authority ..... 155

3. Attitude of Foreign States—The Concept of Historic Title Does Not Require Acquiesence by Foreign Nations Other Than Tacit Acquiesence or Toleration ..... 156

4. Vital Interests ..... 158

**SPECIFIC AREAS** ..... 162

**I. Chandeleur and Breton Sounds** ..... 165

**II. Ship Island to Chandeleur Island** ..... 170

**III. Isle Au Breton Bay** ..... 171

**IV. The Mississippi River Delta** ..... 177

A. Blind Bay ..... 179

B. Garden Island Bay ..... 180

C. West Bay ..... 182

D. East Bay ..... 183

1. Historic Title Test Applied to East Bay ..... 185

a. Preconvention International

Page

Law—The 10 Mile Rule in East Bay ..... 186

b. Elements of Historic Title ..... 195

(1) Nature of Geography as a Source of National Interest 199

(2) Interests in Internal Security ..... 201

(3) Economic Interests ..... 211

(4) Exercise of Authority: Control of Inland Waters ..... 216

aa. Congressional Act of February 19, 1895 .... 218

bb. Captain of the Port of New Orleans ..... 235

cc. New Orleans Marine Inspection Zone ..... 237

dd. Other Federal Activity ..... 238

(i) Tern Island Bird Reservation ..... 238

(ii) 1940 Remeasurement of the United States .... 239

ee. State Control Over Natural Resources ..... 242

(i) Fisheries Regulation ..... 242

(ii) Pollution Control ..... 245

Page

(iii) Control of Seismic Operations.. 246

(iv) Control Over Mineral Resources ..... 247

ff. Other State Activity .. 248

(5) Continuity of Authority: Duration of Exercise of Control ..... 250

(6) Attitude of Foreign States: Absence of Opposition to Control ..... 252

(7) Legal Boundary and Historic Title ..... 254

aa. Louisiana Purchase—1803 ..... 254

bb. Louisiana's Act of Admission ..... 256

2. Application of the Convention on the Territorial Sea and the Contiguous Zone

a. Article 8—Harbors ..... 258

b. Article 13—Mouth of River .... 266

c. Article 7—Bay Closing Lines .... 262

3. Synopsis ..... 264

**V. The Ascension Bay Area** ..... 270

A. Spoil Bank at Pass Tante Phine ..... 278

B. Beach Erosion Jetties at Grand Isle ..... 282

Page

**VI. Section of Coastline Extending from the Belle Pass Jetties on the East to Point au Fer on the West** ..... 284

A. Timbalier Bay—Terrebonne Bay—Lake Pelto Complex ..... 385

B. Caillou Bay ..... 295

**VII. Area From Point au Fer to Tigre Point** 304

A. Closing Line across Atchafalaya ..... 304

B. The Effect of Elevations Within Three Miles of the Atchafalaya Bay Closing Line ..... 307

C. General Issues in Atchafalaya Bay Area ..... 326

D. The Closing Line for Outer Vermilion Bay ..... Bay

E. General ..... 333

**VIII. Dredged Ship Channels** ..... 333

A. History of the Submerged Lands Act Re Dredged Channels ..... 336

B. The Channels are Federal not State Extensions o fthe Coast Line ..... 340

C. Article 8 of the Convention on the Territorial Sea and the Contiguous Zone is Mandatory ..... 340

D. The Channels Are Necessary to the Louisiana Port System ..... 342

E. Government Expenditures Evidence the Fact that Channels are Inland Waters 344

Page

F. As a Practical Matter the Channels are the Outermost Permanent Harbor Works ..... 345

1. Mississippi River-Gulf Outlet ..... 345
2. The Passes of the Mississippi River 346
3. Empire Waterway ..... 347
4. Barataria Bay Waterway ..... 348
5. Bayou Lafourche-Belle Pass ..... 348
6. Houma Navigation Canal ..... 350
7. Atchafalaya River Channel ..... 350
8. Freshwater Bayou ..... 351
9. Calcasieu Ship Channel and Passes 351
10. Sabine-Neches Waterways ..... 352

**CONCLUSION** ..... 354

## CITATIONS

CASES:

*Alleganean, The*, 4 Moore International Arbitrations 4332, (1898) ..... 226

*Anna, The*, 5 Rob. 373 (1805) .....127, 174, 281, 322, 324

*Antelope, The*, 23 U.S. (10 Wheat.) 66 ..... 31

*Boston Sand and Gravel Co. v. United States*, 278 U.S. 41 ..... 51

*Davis v. Wakelee*, 156 U.S. 680 ..... 135

*Delaware, The*, 161 U.S. 459 .....42, 52, 53, 339

Page

*Fisheries Case* (United Kingdom v. Norway), I.C.J. Reports [1951] .....85, 137, 157, 158

*Fort Leavenworth R.R. Co. v. Lowe*, 114 U.S. 525 .....54, 59

*Geofroy v. Riggs*, 133 U.S. 258 .....55, 59, 136

*Great Northern Railway v. United States*, 315 U.S. 262 ..... 50

*Greenport Basin and Construction Co. v. United States*, 260 U.S. 512 ..... 50

*Grisbadarna, The*, (1916) Hague Court Reports 121 ..... 349

*Gulf of Fonseca, The*, 2 American Journal of International Law, 693 (1917). (Central American Court of Justice) ..... 160, 161

*Hilton v. Guyot*, 159 U.S. 113 ..... 31

*Louisiana v. Mississippi*, 202 U.S. 1.....22, 23, 55 59, 136, 165

*Lubeck v. Mecklenburg-Schweerin* ..... 223

*Manchester v. Massachusetts*, 139 U.S. 240....117, 125

*Martin, Application of*, 195 F 2d 303 (CCPA).... 50

*Martin v. Commissioner of Patents*, 344 U.S. 824, 50, 51

*McCarthy v. Pennsylvania R.R. Co.*, 156 F 2d 877 (C.C.A. Ind., 1946), Cert. denied, 329 U.S. 312 ..... 50

*Murray v. Schooner "Charming Betsy,"* 6 U.S. (2 Cr.) 64 ..... 43

Page

*New Mexico v. Colorado*, 267 U.S. 30.....56, 59, 136

*North Atlantic Coast Fisheries Case*, Scott, The Hague Court Report, 141 (1916) .....90, 96, 101, 102, 103, 104, 106, 130, 145, 159, 199

*Northern Pacific Railroad v. United States*, 156 F 2d 364 (7th Cir. 1946) affirmed, 330 U.S. 248 ..... 50

*Stanford's Estate v. Commissioner of Internal Revenue*, 308 U.S. 39 ..... 50

*State v. Buck*, 46 La Ann 656, 15 So 581 (1894) 172, 183

*Talbot v. Seeman*, 5 U.S. (1 Cr.) 1 ..... 43

*Udall v. Tallman*, 380 U.S. 1 .....

*United States v. Bevans*, 16 U.S. (3 Wheat) 336 .. 29

*United States v. California*, 332 U.S. 19 .....

*United States v. California*, 381 U.S. 139 .. 52, 64, 66, 67, 68, 69, 76, 81, 82, 83, 88, 121, 152, 163, 166, 176, 194, 195, 278, 281, 297, 298, 334, 335, 342

*United States v. California*, 382 U.S. 448 ..... 70, 71, 83, 85

*United States v. Carter*, 171 F 2d 530 (5th Circ. 1948) ..... 51

*United States v. Congress of Industrial Organization*, 335 U.S. 106 ..... 50

*United States v. Korpan*, 237 Fed 2d 676 (7th Cir. 1956) ..... 50

*United States v. Louisiana*, et al., 382 U.S. 288, Supp Decree No. 1 Proposal by United States

Page

and Memorandum in Support of Proposal Supp Decree No. 1 ..... 82, 167, 170

*United States v. Louisiana*, et al., 339 U.S. 699 .... 2

*United States v. Louisiana*, et al., 340 U.S. 899 ....

*United States v. Louisiana*, et al., 354 U.S. 515 .... 3

*United States v. Louisiana*, et al., 363 U.S. 1 ..... 3, 60, 133, 134, 167

*United States v. Louisiana*, et al., 364 U.S. 502 .... 4

*United States v. Louisiana*, et al., 382 U.S. 288 .. 70, 167, 304

*United States v. Louisiana*, et al., 389 U.S. 155 .. 334, 342

*United States v. Turner*, 175 F. 2d, 644, 647, cert. denied, 338 U.S. 851 .....

*Vane v. Newcombe*, 132 U.S. 220 ..... 51

*Washington v. Oregon*, 211 U.S. 127..... 56, 59, 136

*Zemel v. Rusk*, 381 U.S. 1 .....

TREATIES AND STATUTES:

Act of April 21, 1806, 2 Stat. 391 ..... 5, 10, 13, 14

Act of February 10, 1807, 2 Stat. 413 ..... 5, 3, 14

Act of February 20, 1811, 2 Stat. 641 ..... 10, 14

Act of April 8, 1812, 2 Stat. 701 ..... 14, 256

Act of April 29, 1864, 13 Stat. 58 ..... 35, 220

Page

Act of February 28, 1871, 16 Stat. 440 ..... 35

Act of March 3, 1885, 23 Stat. 438 ..... 36

Act of August 19, 1890, 26 Stat. 320 ..... 28, 38

Act of May 28, 1894 ..... 219

Act of February 19, 1895, 28 Stat. 672, 33 U.S.C. 151-159 .....3, 5, 6, 9, 10, 20, 27 ,28, 29-34, 39, 41, 46, 50, 54, 219, 223

Act of June 7, 1897, 30 Stat. 96, 33 U.S.C. 1051, et seq. ..... 26, 34, 220

Act of February 14, 1903, 32 Stat. 829, 33 U.S.C. 151-159 .....9, 10, 20, 29, 32, 41, 54

Act of March 4, 1913, 37 Stat. 736, 33 U.S.C. 151-159 .....5, 9, 20, 29, 32

Act of August 27, 1935, 49 Stat. 888, 46 U.S.C. 88 22, 46, 51

Act of June 20, 1936, 49 Stat. 1544-45, 46 U.S.C. 367 ..... 22, 46, 51

Act of July 17, 1939, 53 Stat. 1049, 46 U.S.C. 224 6, 20, 46, 51

Act of July 16, 1946, 60 Stat. 1097, 33 U.S.C. 151-159 ..... 5, 9, 20, 32, 41, 54

Act of June 25, 1948, 61 Stat. 931, 28 U.S.C. 133

Act of May 22, 1953, 67 Stat. 29, 43 U.S.C. 1301-15 ..... 2, 6, 7, 10, 15, 49, 50, 53, 54, 60, 77, 246

Page

Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. (Pt. 2) 1606:.... 67, 137

Art. 2 ..... 244

Art. 3 ..... 67

Art. 4 ..... 68, 162, 163, 169, 258

Art. 6 ..... 46, 47

Art. 7 ....67, 71, 110, 114, 115, 117, 121, 131, 137, 138, 146, 171, 173, 175, 187, 262, 264, 270-77, 285-87, 304, 306, 331

Art. 8 ..... 67, 258, 260, 266, 282 285, 334-35, 340, 355

Art. 10 .....47, 71, 85, 321, 323, 325, 326

Art. 11 ..... 71, 307-08, 311, 312, 316, 318, 321, 323, 326

Art. 13 ..... 260, 262, 266

Art. 17 ..... 41, 42

Art. 24 ..... 47, 48

Louisiana Act 18 of 1870 ..... 242

Louisiana Act 11 of 1921 ..... 248

Louisiana Act 103 of 1926 ..... 243

Louisiana Act 68 of 1932 ..... 245

Louisiana Act 51 of 1948 ..... 244

Louisiana Act 33 of 1954 ..... 26, 54, 59, 68

Louisiana Act 9 of 1962 ..... 84

Louisiana R.S. 9:1101 ..... 242

Louisiana R.S. 9:2791 ..... 242

Page

Louisiana R.S. 14:217 ..... 242

Louisiana R.S. 15:48.1 ..... 242

Louisiana R.S. 30:211 ..... 242, 246

Louisiana R.S. 56:1-1623 ..... 242

Reorganization Plan No. 3 of 1946, 60 Stat. 1097 20

Reorganization Plan No. 26 of 1950, 64 Stat. 1280 20

Treaty of Paris, October 21, 1803..... 255

United States Constitution, Art. IV, Sec. 3..... 55

MISCELLANEOUS:

3 *Acts of Conference for the Codification of International Law* (1930):

p. 107 ..... 139

p. 179 ..... 109

p. 195 ..... 48

p. 211 ..... 143

p. 217 ..... 309-10, 322

p. 218 ..... 106, 122

p. 219 ..... 108, 324

7 *Alaska Boundary Arbitrations*, S. Doc. 162, 58th Cong., 2d Sess., 844 ..... 101

23 *American Journal of International Law, Special Supplement* 265 (1929) ..... 105

24 *American Journal of International Law* 540 (1930) ..... 107

*American State Papers*, 1 *Foreign Relations* 698 (January 25, 1795) ..... 203

Page

*American State Papers*, 1 *Foreign Relations* 61 (October 17, 1803) ..... 205

*American State Papers*, 2 *Foreign Relations* 536 (Jaunary 7, 1802) ..... 203-204, 208

*American State Papers*, 5 *Foreign Relations* 276 (1834) ..... 255

49 *Annals of the American Association of Geographers* 8 (1959) ..... 133

22 *Annals of Congress* 27 (1810) ..... 5

22 *Annals of Congress* 496 (1810) ..... 57

22 *Annals of Congress* 519 ..... 57

22 *Annals of Congress* 116 (1811) ..... 14

22 *Annals of Congress* 484 (1811) ..... 57

1 *Annuaire* 221 (1954) ..... 151

*Azuni, Sistema universale dei principi del diritto marittimo dell' Europa* 91 (1795) ..... 95

Atwood, *The Physiographic Provinces of North America*, 493, 499 ..... 60

Boggs, "Delimitation of the Territorial Sea," 24 *American Journal of International Law* 550-51 (1930) ..... 124

Boggs, "Delimitation of the Territorial Sea," 24 *American Journal of International Law* 258 (1951) ..... 127

Page

Borquin, "Les baies historiques," *Melanges Georges Sauser-Hall* (1952):

p. 46 ..... 197

p. 51 ..... 161, 162

*Bouchez, The Regime of Bays in International Law* 233 (1964) ..... 119

Brief for the United States in Answer to California's Exceptions to the Report of the Special Masters, United States v. California, 108, United States v. California, 381 U.S. 139 .... 126

33 C.F.R. ..... 21, 236, 238

*Circular No. 88, Department of Commerce and Labor* (1905) ..... 229

*Circular No. 158, Department of Commerce and Labor* (1907) ..... 229, 230

*Circular No. 230, Department of Commerce and Labor* (1911) ..... 230, 231

27 *Congressional Record* 2059 (1895) ..... 28, 39

30 *Congressional Record* 932 (1897) ..... 40

99 *Congressional Record* 2634 (1953) ..... 57, 58

13 *Debates and Proceedings of Congress* 33 (1803) ..... 207, 208

5 Colliers Encyclopedia (1967) ..... 154-60

Page

*Crocker, The Extent of the Marginal Sea* 541-2 (1919):

p. 541-42 ..... 174

p. 491 ..... 102

12 *Debates and Proceedings of Congress:* (Feb. 16, 1803):

p. 92 ..... 205

p. 153 ..... 206

p. 1095 ..... 208

8 *De Boros, Review of the Southern and Western States* 532 (1852) ..... 202

Decree Proposed by the State of California and Memorandum in Support of Proposed Decree, p. 3, pp. 9-12, p. 16, p. 22, 382 U.S. 448 82

*De Vattel, Le droit des gens* 128-30 (1758) ..... 94

*Encyclopedia of the Laws of England* (1897, "Territorial Waters" ..... 256

*Executive Hearings on S.J. Res.* VC *and Other Bills Before the Committee on Interior and Insular Affairs of the Senate*, 83d Cong., 1st Sess. 1380 (1953) ..... 336

*Fair, Port Administration in the United States* (1954) ..... 345

15 *Fed. Reg.* 6521 ..... 20

Page

19 *Fed. Reg.* 1730 ..... 247

*Fisk, Geological Investigation of the Alluvial Valley of the Lower Mississippi River, War Department, Corps of Engineers* (1944) ..... 262

*Fitzmaurice*, 31 *British Yearbook of International Law* (1954):

p. 371 ..... 223, 312, 314

p. 376 ..... 151, 223

p. 393 ..... 226

p. 394 ..... 312, 314

Fitzmaurice, "Some Results of the Geneva Conference on the Law of the Sea", 8 *Int. Comp. L.Q.* (1959):

pp. 86-7 ..... 317

p. 85 ..... 323

*Fletcher and Wolfe, Earth Science*, 4th Ed., 488 (1959) ..... 60

*Fulton, The Sovereignty of the Sea* (1911):

p. 119 ..... 92

p. 156 ..... 92

*Galiani, Dei doveri dei principi neutrali* 422 (1782) ..... 94

3 *Gidel, Le Droit International Public de la Mer* (1934):

p. 48 ..... 12

Page

p. 546 ..... 97

pp. 549-50 ..... 99

p. 555 ..... 102

p. 559 ..... 101

pp. 584-85 ..... 107

p. 633 ..... 150

p. 726 ..... 289-90

*Griffin, Collisions* 12 (1949) ..... 28

*Grotius, De juri belli ac pacis libri tres* 209 (1625) .. 93

*Grotius, The Freedom of the Seas* 37 (1609, translated by Magoffin, 1916) ..... 92

*Gulf of Mexico—Its Origin, Waters, and Marine Life,* Fishery Bulletin 89, *U.S. Department of the Interior* (1954):

p. 165-69 ..... 211

1 *Hackworth, Digest of International Law* (1940):

p. 692 ..... 159

p. 711 ..... 223

2 *Hackworth, Digest of International Law* (1940):

p. 263-64 ..... 176

*Hearings on S.J. Res. 13 and Other Bills Before the Committee on Interior and and Insular Af-*

Page

*fairs of the Senate*, 83d Cong., 1st Sess. (1953):

p. 931 ..... 16

p. 932 ..... 16

p. 933 ..... 16

p. 925-65 ..... 16

p. 939 ..... 17

p. 947 ..... 18

p. 948 ..... 18

p. 1070 ..... 109

*Hanna, Some Characteristics of the Coast Line of Louisiana*, Memorandum PREPARED FOR USE OF Attorney General of Louisiana, appearing at hearings at New Orleans, Louisiana, Dec. 10 and 11, 1952, before the House Sub-Committee on Inland Water Boundaries, on H.H. Res. 676 ..... 61, 63

*Hearings on S. 155 and Other Bills Before the Committee on Interior and Insular Affairs of the Senate*, 83d Cong., 1st Sess. (1953): ..... 19

*Hearings Before the Senate Committee on Foreign Relations*, 86th Cong., 2d Sess., on Ex. Doc. J, K, L, M, and N (1960) ..... 46

*Hearings on H.R. 5991 and 5992 Before Sub-*

Page

*Committee No. 1 of the House Committee of the Judiciary*, 81st Cong., 1st Sess. 74-75 (1949) ..... 19

*House Exec. Doc. No. 9*, 27th Cong., 1st Sess. (March 6, 1841) ..... 210

*House Ex. Doc. No. 55*, 46th Cong., 2nd Sess. (1880) ..... 35, 36, 37

*H.R. Rep. No. 731*, 48th Cong., 1st Sess. (1884): 36,37, 38, 221

H.R. Rep. 2515 82d Cong. 2nd Session (1952):

p. 19 ..... 77

*H.R. Rep. No. 215*, 83 Cong., 1st Sess. 4 (1953): 77, 336

*H.R. Rep. 1615*, 53d Cong., 3d Sess. (1895):

p. 3 ..... 39

p. 6 & 7 ..... 38

*H.R. Rep. 1911*, 53d Cong., 3d Sess. (1895) ..... 39

*H. Res. 676*, 82 Cong., 2d Session (1953) ..... 77

Humphreys and Abbot, "Report on the Physics and Hydraulics of the Mississippi River," *U.S.A. Engineers Professional Paper No. 4* (1876).... 190

1 *Hyde, International Law—Chiefly as Interpreted by the United States*, 2Ed, (19 ):

p. 469 ..... 137

Page

p. 469, n.4 ..... 141

p. 471 ..... 222

p. 487-88 ..... 119

p. 751 ..... 221, 222

71 *Interior Decision* 22 (1963) ..... 63, 76

4 Jefferson, *Writings* ..... 457, 209

*Jessup, The Law of Territorial Waters and Maritime Jurisdiction* 360 (1934) ..... 102

31 *Journals of the Continental Congress* 586 (May 29, 1786) ..... 202

*League of Nations Publication* C 74. M39, 1929. V 12 at 17 ..... 145

*Marginal Waters of the United States,* (Coast Guard Orders: 1925) ..... 44, 45

*McDougal and Burke, Public Order of the Oceans* (1962)

p. 360.....

p. 363 ..... 153

p. 396-97 ..... 316

p. 397 ..... 321, 323

*Matherson, Jurisdiction in Marignal Seas,* xiii (1929) ..... 144

Memorandum for the United States in Reply to Louisiana's Brief in Opposition to Motion for

Page

Leave to file complaint, *U.S.* v. *La., et al.*, 363 U.S. 1, ..... 63

1 Messages and Papers of the President, 383-84 .... 13

4 Miller, *Treaties and Other International Acts of the United States of America*

p. 383 ..... 56

p. 391-92 ..... 58

4 *Moore, International Arbitrations* 4332 (1898):

p. 4339 ..... 154

p. 4341 ..... 268-69

p. 4344 ..... 99

1 *Moore, International Law Digest* (1906):

pp. 698-99 ..... 144

p. 703 ..... 256

p. 735 ..... 160

2 *Moore, International Law Digest* (1906):

p. 74 ..... 219

p. 272 ..... 222

Morgan, "Mudlumps at the Mouth of the Mississippi River," *Geological, Bulletin No. 35, Louisiana Geological Survey, Department of Conservation*, 11 (1961) ..... 61

p. 55-59 ..... 173

Page

pp. 86-90 ..... 180

p. 93 ..... 173

p. 94 ..... 173

p. 100, n.9 .....

1-24, 55-59, 97-100 ..... 62, 180

Morgan and Larimore, "Changes in the Louisiana Shoreline, *VIII Transactions*," *Gulf Coast Association of Geological Societies* (1959) .... 61

3 *Official Records, United Nations Conference on the Law of the Sea*, (1948):

p. 186 ..... 314-15

p. 187 ..... 314

p. 243 ..... 314

4 *Official Records, United Nations Conference on the Law of the Sea 51* (1958) ..... 47

1 *Opinions of the Attorney General of the United States* (1793)

p. 15 ..... 153

p. 16 ..... 153

p. 17 ..... 160

p. 18 ..... 154

Page

pp. 33-38 ..... 226

p. 34 ..... 251

p. 37 ..... 154, 254

[April 1, 1936-April 1, 1938] *Opinions of the Louisiana Attorney General* 959 ..... 330, 355

*Padova, Il mare territoriale nel dirrito internazionale comune* 80 (1934) ..... 228

Pearcy, "Geographical Aspects of the Laws of the Sea," 49 *Annals of the Association of American Geographers*, No. 1, 8, 9 (1959) .... 128, 323

p. 2-5 ..... 324

Pearcy, " Measurements of the U.S. Territorial Sea," 40 *Department of State Bulletin* (1959):

pp. 963-68 .... 117, 118, 119, 125, 299, 300, 318

Pearcy, "Sovereignty of the Sea," *U.S. Dept. of State Geographic Bulletin* No. 3 of April, 1965 ..... 111, 112

Powers, "Fishery Statistics of the United States, 1959," 51 *United States Fish and Wildlife Service Statistical Digest* (1961) ..... 212

Proudfoot, "Measurement of Geographic Areas," 33 *U.S. Department of Commerce* 32 (1946) .. 240

Page

*Pufendorf, De jure naturale, et gentium libri octo* (1688)

p. 565 ..... 93

*Report of the Chief of Engineers, U. S. Army,* 1847-50 Appendix (1958) ..... 218

*Report of Corps of Engineers, New Orleans District, on Hurricane Betsy,* 8-11 September 1865, Ser. No. 2463 (November 1965) .... 63

*Report of Corps of Engineers, New Orleans District, on Hurricane Hilda* 3-4 October 1964, Ser. No. 327 (May 1966) ..... 63

*Richardson, Messages and Papers of the President,* 1789-1897.

p. 383-84 ..... 13

p. 480-481 ..... 57

*Scott, Reports to the Hague Conference of 1899 and 1907* 664 ..... 102, 103,106

*Senate Ex. Doc.* No. 53 at 66, 51st Cong., 1st Sess. (1888) ..... 38

*Senate Ex. Doc. No.* 160, 47d Cong., 1st Sess. (1882) .....35, 36, 37

*Senate Misc. Doc. No. 109,* 50th Cong., 1st Sess. 155-56, p. 21 ..... 101

*Senate Report* No. 838, 82d Cong., 1st Sess. (1951) ..... 32

Page

*Senate Report No. 133*, 82d Cong., 1st Sess., 18 (1953) ..... 109, 337

1 *Shalowitz, Shore and Sea Boundaries* (1962);

p. 40 ..... 188

p. 41 ..... 188, 241

p. 42, n. 17 ..... 108, 141

p. 48 ..... 162

p. 61 ..... 124, 127

pp. 63-64 ..... 123, 131, 180

p. 109 ..... 165, 166

p. 110 ..... 304

pp. 219-20 ..... 112, 270, 273, 270 273, 275

p. 224 ..... 271

p. 225 ..... 290, 291

p. 226 ..... 323

pp. 228-9 ..... 318

pp. 274-75 ..... 280

p. 329 ..... 84

p. 354 ..... 139

p. 356 (Appendix D) ..... 158

2 *Shalowitz, Shore and Sea Boundaries* (1964):

p. 328 ..... 279

p. 684 ..... 279

Page

*Stansby, Industrial Fishery Technology* (1963):
p. 29 ..... 213
p. 147 ..... 215
p. 152 ..... 215
p. 160 ..... 214
p. 163 ..... 213

1 *State Papers and Publick Decuments of the United States,* 3d Ed. (1819):
pp. 73, 75-76 ..... 96
p. 196 ..... 96

*Strohl, International Law of Bays* (1963):
p. 60 ..... 116
p. 68 ..... 123
p. 72 ..... 117, 129
p. 76 ..... 290
p. 77 ..... 116

*Transactions of International Law Association* (1873-1924) 223 ..... 102

*Treasury Department Circular No.* 107 (1900) .. 229

*Treasury Department Circular No.* 127, (1895) 24, 31, 223-224, 228, 259

*Treasury Department Circular* 230 (1917) ..... 232

*Treasury Department Circular* 230 (1927) ..... 232

Page

*Treasury Department Circular* 230 (1928) ..... 232

*Treasury Department Circular* 230 (1932) ..... 233

33 *Tulane Law Review* 331 (1959) ..... 73

*U.N. DOC. A/CN 4/143* (1962:

p. 17 ..... 139

p. 18 ..... 142, 146

p. 28 ..... 149

p. 33 ..... 141

p. 40 ..... 150

p. 43 ..... 152

p. 45 ..... 156

p. 47 ..... 157

p. 49 ..... 157

p. 55 ..... 158

*Art. 2, U.N. DOC. A/Conf. 13/L 53* ..(1958) 221, 244

*Art. 2, U.N. DOC.* A/Conf. 13/L 53 (1958 .. 221, 244

*U.N. DOC.* A/Conf. 13/55 (1958) ..... 267

*U.N. DOC.* A/Conf. 13/C.1/L:

p. 145 ..... 122

p. 255 ..... 122

*U.N. DOC.* A/Conf. 13/1 (1958):

pp. 3-8 ..... 146

Page

p. 4 ..... 160

p. 5 ..... 160

p. 9 ..... 161

p. 11 ..... 161

*U. S. Department of Commerce, Coast and Geodetic Survey, United States, Coast Pilot 7, Pacific Coast*, 9th Ed. (1963) ..... 60

*Wheaton, Elements of International Law* 215 (1866) ..... 127

4 *Whiteman, Digest of International Law* (1965):

pp. 176-77 ..... 310

p. 218 ..... 99

pp. 278-79 ..... 322

1953 *Yearbook of the International Law Commission*, vol. 2, p. 78 ..... 111

1954 *Yearbook of the International Law Commission*, vol. 1:

pp. 90-94 ..... 325

pp. 96-97 ..... 313

p. 156 ..... 310

1955 *Yearbook of the International Law Commission*, vol. 1, p. 211 ..... 119

1955 *Yearbook of the International Law Commission*, vol. 2, p. 38 ..... 311, 314

Page

1956 *Yearbook of the International Law Commission*, vol. 2:

pp. 253-270 ..... 282

p. 269 ..... 121

pp. 268-269 ..... 289

p. 270 ..... 311, 314, 323

p. 294 ..... 48

**Number 9 Original**

# In the
# Supreme Court of the United States

OCTOBER TERM 1968

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF LOUISIANA, ET AL.

**Brief of the State of Louisiana in Support of its Motion for Entry of Supplemental Decree No. 2; and in Support of its Response and Opposition to the Counter-Motion by the United States; and in Support of Louisiana's Alternative Motion for Entry of Supplemental Decree Number 2**

## STATEMENT OF THE CASE

This matter now comes before the Court for decision on a motion filed by the State of Louisiana in September, 1967, requesting entry of Supplemental Decree No. 2 recognizing the "coast line" of Louisiana, and declaring Louisiana to be the owner of all lands, minerals, and natural resources which are landward of a line three geographical miles seaward from the coast line of the State as thus established. The coast line for which Louisiana prayed is the line which has been designated and defined as the outer limit of inland waters by the United States under Congressional authorization, and accepted and approved by the State of Louisiana. This line is hereinafter styled the "Inland Water Line." The United States has answered this motion by counter-motion dated January, 1968, which

in effect denied the correctness of Louisiana's contention, as to the location of the line marking the "coast line" of Louisiana, and in turn proposed another location for the establishment of said line based on shoreline configurations. Louisiana filed a Response and Opposition to the Counter-Motion by the United States and, in the alternative, after reiterating its position that the Inland Water Line is the established coast line of Louisiana, showing that in any event the coast line is not as proposed by the United States but would be delimited more seaward than the line urged by the United States.

In *United States v. Louisiana*, 339 U.S. 699, this Court held that the State of Louisiana was not entitled to the lands, minerals, and other natural resources underlying the Gulf of Mexico seaward of the ordinary low-water mark on the shore and outside of the inland waters of the State of Louisiana.[1] Thereafter, Congress enacted the Submerged Lands Act, 67 Stat. 29, 43 U.S.C. Sections 1301-1315 (1953), confirming, granting, and quitclaiming to each coastal state the submerged lands of the Continental Shelf to a minimum of three miles from its coast line, and to its historic boundary in the Gulf of Mexico, provided such historic boundary was not to extend beyond three leagues from the coast line of the state. Section 2(c) of the Act defined coast line as the "line of ordinary low water along that portion of the coast which is in direct contact with the open sea *and the line marking the sea-*

[1] *See Decree*, 340 U.S. 899.

*ward limit of inland waters.*" (Emphasis supplied.) There was no additional definition of "coast line" in the statute, nor was the term "inland waters" expressly defined in the statute.

This proceeding was then brought by the United States against the State of Louisiana to have adjudicated Louisiana's claim to a maritime boundary *three leagues* from its coast line. Pursuant to the order of this Court,[2] the suit was broadened to include all Gulf Coast States so that the extent of all of their maritime boundaries could be determined in a single proceeding at which all affected states were represented. This Court held that under the Submerged Lands Act, Louisiana was only entitled to "submerged-land rights to a distance no greater than three geographical miles from its coastlines, wherever those lines may ultimately be shown to be." [3] In the "Conclusions" of the Court, it defined "coast" as "the line of ordinary low-water mark and *outer limit of inland waters*. . . ." (Emphasis supplied.) With reference to Louisiana's contention based on the line established by the United States pursuant to Act of February 19, 1895, as amended[4] and accepted and approved by Louisiana pursuant to the Submerged Lands Act and her own Act 33 of 1954 and fixing the said line as its "coast line," the Court said:

> We think the consideration of this contention should be postponed to a later stage of this case.[5]

[2] 354 U.S. 515.

[3] 363 U.S. at page 79.

[4] 28 Stat. 672, 33 U.S.C. 151.

[5] 363 U.S. at p. 79.

The Court in that case reserved jurisdiction for later adjudication on this question,[6] which is now at issue.

The Government says that Louisiana claims a line described by the Acting Commandant of the Coast Guard which was marked only for the purpose of governing navigation. This is wholly erroneous. The line was designated and defined by agencies of the Federal Government directed by Congress to do so. The process was commenced in 1895, decades before the Coast Guard had anything to do with it, although in 1953 the Coast Guard completed the work by continuing the lines placed on charts since 1895. Moreover, the line was not designated and defined for navigation purposes only but since that purpose necessarily entailed ascertaining the inland waters in a jurisdictional sense, it had had the effect of designating the seaward limit of inland waters for all jurisdictional and territorial purposes. Its acceptance and approval by Louisiana as aforesaid fixes it so that it cannot be changed as the base line from which to measure her boundary without her consent.

Louisiana's present motion for Decree No. 2 seeks the recognition of this "Inland Water Line," or coast line.

## ARGUMENT

For convenience we have divided our argument into two principal parts. Part 1 supports Louisiana's motion that the Inland Water Line should be recognized as the coast line of Louisiana for purposes of

[6] 364 U.S. 502, 504.

the Submerged Lands Act. Part 2, in the alternative, deals with placement of the coast line in the event the Court does not recognize the Inland Water Line. This division is not absolute, since it is convenient to treat some matters which may affect both portions of the argument in either one section or the other to avoid undue repetition.

## PART I

## THE INLAND WATER LINE SHOULD BE RECOGNIZED AS THE COAST LINE OF LOUISIANA

As has been indicated above, on February 19, 1895, Congress enacted legislation authorizing and directing the Secretary of the Treasury to "*designate and define* by suitable bearings or ranges with lighthouses, light vessels, buoys, or coast objects, *the lines dividing the high seas from rivers, harbors, and inland waters.*" (Emphasis supplied.) By subsequent amendments this authority was transferred to other agencies and finally to the "Commandant of the Coast Guard," who had such authority in 1953.[7] In 1953, pursuant to the authority and direction of this Act of Congress, the Commandant of the Coast Guard completed the work begun by his predecessors and designated and defined the "line dividing the high seas from . . . inland

[7] 28 Stat. 672; 32 Stat. 829; 37 Stat. 736; 60 Stat. 1097; 33 U.S.C. 151. The 1895 act was preceded by Acts of April 21, 1806, 2 Stat. 391 and February 10, 1807, 2 Stat. 413. *See* 22 *Annals of Congress* 27 (1810) showing early as well as continuing concern of Congress with a water boundary of the United States. *See* Louisiana Memorandum, May 1968, pages 6 & 7.

waters." [8] The Submerged Lands Act,[9] in Sec. 4, provided that any state admitted subsequent to the formation of the Union, which had not already done so, may extend its seaward boundaries to a line three geographical miles from the coast line, and defined *coast line* as "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and *the line marking the seaward limit of inland waters.*" (Emphasis supplied.) Louisiana then, adopted its Act 33 of 1954,[10] accepting and approving as its coast line the designation and definition of the seaward limit of inland waters made by the agencies of the United States government pursuant to applicable Acts of Congress.[11]

Congress, by virtue of the Act of February 19, 1895, as amended, authorized and directed federal agencies to determine a physical or factual question, that is, where inland waters ended and the high seas began. Having made the determination, the representative named by the Congress marked the line and officially defined and designated its location as provided by the statute. Congress again referred to and adopted the 1895 definition of inland waters and high seas in various statutes, *e.g.*, on July 17, 1939, in an Act relating to officers and crews, thus:[12]

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[8] *See* chart issued by *U.S. Coast Guard & Geodetic Survey* Nos. 1115 and 1116, Exhibit 1. *See also* Memorandum of Louisiana filed May, 1968, in opposition to motion by the United States, pp. 13 & 14 and p. 18.

[9] 67 Stat. 29; 43 U.S.C. 1301-1315 (1953).

[10] La. R.S. 49:1.

[11] 28 Stat. 672; 33 U.S.C. 151.

[12] 53 Stat. 1049, 46 U.S.C. 224 (a) (12).

> (12) Where used in this section—(a) the term "high seas" means all waters outside the line dividing the inland waters from the high seas, as defined in section 151 of Title 33;. . . .

With the Act of February 19, 1895, as amended, still on the statute books directing that the line be designated separating the inland waters from the high seas, and thus fixing the outer limit of inland waters, the Congress adopted the Submerged Lands Act, in which it defined the coast line as the "seaward limit of inland waters," granting, or restoring, to the littoral states the submerged lands and the resources thereof, extending a minimum distance of three miles from that coast line. Louisiana, through Act 33 of 1954, accepted the designations made by the representative of the Congress, and in measuring the extent of the grant or restoration to her, under the Submerged Lands Act, merely accepted the physical or factual determination, authorized by Congress, designating the location of the seaward limit of its inland waters, and from such location measures her seaward boundary. It cannot be denied that as a result of the Act of February 19, 1895, as amended, the will of Congress was legislatively asserted and consummated, separating the inland water from the high seas.

The complete definition of "coast line" in the Submerged Lands Act reads:[13]

> The term "*coast line*" *means* the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and *the line*

[13] 67 Stat. 29, 43 U.S.C. 1301 (c).

*marking the seaward limit of inland waters.* (Emphasis supplied.)

Note that the Submerged Lands Act calls only for following the line of ordinary low water along that portion of the coast which is in "*direct*" contact with the "*open* sea." As we will hereafter demonstrate, "high seas," under the meaning of that term as used in the Act of 1895, means the *open sea lying seaward of the coast line*, and not merely "high seas" in the international waters sense; that is, the territorial sea as well as the international waters are included in the term "open sea" *and* in the term "high seas" as used in designating the line which divides inland waters from the high seas. Therefore, it is obvious that where the Inland Water Line lies seaward of the low water mark of the physical shore, that low water mark cannot be employed as the "coast line." It is not a low-water line in contact with the open sea.

Thus, although the definition of "coast line" in the Submerged Lands Act also states that coast line means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea, the coast line definition does not mean that the coast line must include a line of physical contact between the water and the shore in all states and at all places. The coast line described in the Submerged Lands Act is the entire coast line of the United States, of which Louisiana is only a part. The line laid out in accordance with the 1895 Congressional Act does follow the shore in many places. Charts depicting the line show contacts with the shore along the main-

land and islands in Maine, at Cape Cod in Massachusetts, Long Island and Southeastern New York, Cape May and Cape Henlopen in Delaware Bay, and other points on the Eastern shore. Land contacts in the Gulf of Mexico appear around the Keys of Florida and the headlands of Appalachee Bay, and the Chandeleur Islands in Louisiana. Many other contacts with the shore occur on the headlands of bays in California and the State of Washington on the West Coast.

The United States contends that the statute which authorizes designation of the Inland Water Line is concerned with the limit of inland waters only for purposes of navigational regulation. From this fact, it argues that the Inland Water Line has significance as a navigational regulatory boundary *only* and therefore could not generally affect boundaries. Of course, the seaward boundary for inland rules legislation is the actual seaward limit of inland waters even for the large portions of the nation's coast where the Congressional authority to designate and define that boundary has not been exercised.[14] If the mere fact that the seaward limit of inland waters is employed in navigational legislation means that the limit has significance for navigational regulation purposes *only*, it would logically follow that the seaward limit of inland waters has no significance for purposes of the Sub-

[14]33 U.S.C. 154. Of course, if a designation of the limit by federal agencies adversely affected the boundary claims of a state, the state could claim that its consent to a boundary change was lacking and it was not affected. But the federal government can hardly claim lack of federal consent to a line drawn pursuant to federal legislation.

merged Lands Act, even where that limit has not been designated under 33 U.S.C. 151. Such a result would be patently erroneous, and demonstrates the false sylogistic logic of the federal position. Inland waters are inland waters, irrespective of the statutory context which employs the concept, and irrespective of the particular type of jurisdiction—regulatory or proprietory—which may be dependent upon their extent. As evidence of this fact it should be noted that Congress adopted the same criteria in the Submerged Lands Act for the base point of the property boundary line as it did in the 1895 Act, *i.e.*, the seaward boundary as to "inland waters." It should be noted that the language is similar in the 1895 Act ("the lines dividing the high seas from . . . inland waters") to that of Section 2(c) of the Submerged Lands Act defining coast line ("the line marking the seaward limit of inland waters"). The "line dividing the high seas from . . . inland waters" is, by the very nature of things, the "line marking the seaward limit of inland waters." Thus, the fact remains that the federal agencies, acting under Congressional authority, determined a physical and factual question, and marked the line where the inland waters ended and the high seas began. This line so designated and defined under Acts of Congress, having been accepted and approved by the Louisiana legislature, constitutes the coast line of the State. It appears evident, therefore, that the coast line of Louisiana has been determined in accordance with the expressed will of the Congress of the United States to be the Inland Water Line designated by the federal

agencies directed by Congress to do so, has been accepted by the State, and should be so recognized by this Court.

There are, however, many other and varied reasons for the acceptance of the Inland Water Line as the coast line of Louisiana. With the indulgence of the Court, we will discuss some of these reasons which, it is respectfully submitted, fully substantiate the correctness of Louisiana's position.

## I. The Inland Water Line is in Accord with the Policies of the Nation from its Inception.

The Inland Water Line encloses inland water areas that generally are inaccessible to modern seagoing vessels, or useless as high seas or international traffic routes.

In 1793, Secretary of State Jefferson, in letters written to the diplomatic representatives of France and Great Britain, stated that the character of the American coast would entitle us to as broad a margin of protected navigation as possible. In this letter he wrote:

> The character of our coast, remarkable in considerable parts of it for admitting no vessels of size to pass near the shores, would entitle us in reason to as broad a margin of protected navigation as any nation whatever....

On May 15, 1793, Thomas Jefferson as Secretary of State forwarded to the French Minister an opinion on the seizure of the ship *Grange* in which the Attorney General stated:

> The necessary or natural law of nations . . . will, perhaps, when combined with the Treaty of Paris in 1783 justify us in attaching to our coasts an extent into the sea beyond the reach of cannon shot.[15]

Jefferson, as quoted in the memoirs of John Quincy Adams, indicated that the correspondence meant just what was clearly indicated: the United States is justified in more seaward claims for considerable portions of our coast due to remarkable conditions, and his letter should not be construed as adopting a restrictive policy. See Memoirs of John Quincy Adams, as quoted in Gidel, *Le Droit International Public de la Mer, Vol. 3, p. 48 (f.n. 1)*. Subsequent interpretations to the effect that the Jefferson letter supports the notion of a restrictive three mile territorial sea can only be squared with historical truth if Jefferson's remarks are interpreted to mean that the *coast*—the word he used—is the word he meant—i. e. that the United States is justified in having a *coast* extending into the sea beyond cannon shot at places where remarkable conditions are present.

On December 3, 1805, President Thomas Jefferson in his 5th annual message to Congress made the following report:

> Since our last meeting the aspect of our foreign relations has considerably changed. Our coasts have been infested and our harbours watched by private armed vessels, some of them without Commissions, some with illegal commission, others

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[15]1 *American State Papers, Class I, Foreign Relations,* 147.

> with those of legal form, but committing piratical acts beyond the authority of their commission. They have captured in the very entrance of our harbours, as well as in the high seas, not only the vessels of our friends coming to trade with us, but our own also. . . . I found it necessary to equip a force to cruise within our own seas, to arrest all vessels of these descriptions found hovering on our coasts within the limits of the Gulf Stream and to bring the offenders in for trial as pirates.[16]

It is also apparent that Congress has always considered Louisiana's *coast line* to be *a line in the water*, not the low-water mark along the shore. That Congress has recognized Louisiana's right to extensive bays and sounds and has recognized that the Gulf of Mexico or high sea does not hug the Louisiana shoreline, is evidenced by a number of Congressional actions. By Act of April 21, 1806, 2 Stat. 391, Congress authorized the Secretary of the Treasury,

> to cause a survey to be made of the *sea coast* of the Territory of Orleans, from the mouth of the Mississippi to Vermilion Bay, inclusively, and as much further westwardly as the President of the United States shall direct, *and also of the bays, inlets, and navigable waters connected therewith*: . . . . (Emphasis supplied.)

Later, by Act of February 10, 1807, 2 Stat. 413, Congress authorized the President to cause a survey to be taken of the *coasts* of the United States within 20 leagues from shore or gulfstream. Then, on December 20, 1810, while the Senate was debating passage of

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[16] 1 *Messages and Papers of the President*, 383-84.

the Louisiana Enabling Act, two Senate resolutions were adopted requesting the President and the Secretary of the Treasury, respectively, to report to the Senate the proceedings and measures taken in execution of the Act of February 10, 1807, and April 21, 1806. *See* 22 *Annals of Congress* 27 (1810).

President James Madison transmitted to the Senate a report complying with the resolution of December 20, 1810, and a report of the Secretary of the Treasury on the Survey of the Coast of the Territory of Orleans, together with survey documents relative thereto; both reports and documents were ordered printed on February 4, 1811, for the use of the Senate. *See* 22 *Annals of Congress* 116 (1811).

Only 16 days later, on February 20, 1811, the Enabling Act for the Territory of Orleans was passed by Congress with a description of territorial limits identical to that contained in the later Act of Admission of April 8, 1812. There is no reference to "shore" in these acts; the reference is to "coast." [17]

[17]The enabling act, Act of February 20, 1811, 2 Stat. 641, which established the boundaries for what was to be Louisiana is as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the inhabitants of *all that part of the territory* or country *ceded under the name of Louisiana, by the treaty* made at Paris on the thirtieth day of April, one thousand eight hundred and three, between the United States and France, *contained within the following limits,* that is to say: beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of the said river, including all islands to the thirty-second degree of latitude; thence due north, to the north-

Plainly, the Senate called for reports of the coast surveys authorized in 1806 and 1807 while it was considering the Enabling Act, so as to know the territorial claims of the United States with respect to the seaward boundary to be finally established for the Territory of Orleans and the State of Louisiana. Congress recognized the distinctions between a "coastline" and a "shoreline" in the actions that led to Louisiana's admission to the Union; it continued to recognize this distinction in the Submerged Lands Act of 1953 because the quitclaim in that act was from *coast* and not from shore. The legislative history of the Submerged Lands Act affords ample evidence of the accuracy of this statement.

The Senate Interior Committee and the House Judiciary Committee which held hearings on the act knew the meaning of "coast line" and its distinction from "shoreline." The Senate Committee went into detailed examination of the difference between the two

ernmost part of the thirty-third degree of north latitude; thence along the said parallel of latitude to the river Mississippi; thence down the said river to the river Iberville; and from thence along the middle of the said river and lakes Maurepas and Pontchartrain, to the gulf of Mexico; thence bounded by the said gulf to the place of beginning: including all islands within three leagues of the *coast*, be, and they are hereby authorized to form for themselves a constitution and state government, and to assume such name as they may deem proper, under the provisions and upon the conditions herein after mentioned. (Emphasis partially supplied.)

The Act of Admission of the State of Louisiana into the United States, Act of April 8, 1812, 2 Stat. 701, contains an identical boundary description.

terms in its hearings in 1953. Attorney General Brownell was questioned at length on this subject. *Hearings on S.J.Res.13 and other bills before the Committee on Interior and Insular Affairs of the Senate*, 83d. Cong., 1st Sess. 925-65 (1953):

> Attorney General Brownell. The traditional 3-mile limit would be an accurate description.
>
> Senator Anderson. It is very important that we know *out from what*. Out from the *coastline or the shoreline?* The Holland bill says the coast. [p. 931]
>
> * * *
>
> Attorney General Brownell. The general description *we would use is the shoreline.*
>
> Senator Anderson. Shoreline. *You recognize that that is completely different from the language in the Holland bill* and the Daniel bill?
>
> Attorney General Brownell. I believe you are correct in that statement. [p. 932]
>
> * * *
>
> Senator Anderson. I could not agree with you more, General Brownell, and I think if somebody came in with a line drawn that was *3 miles from the shore, it might be one thing;* but *3 miles from the coast,* if the coast is nebulous and *reaches out to the farthermost edge of the farthermost reef,* it is quite a problem as to where it is going to be.
>
> Attorney General Brownell. *I agree with that.* [p. 933]
>
> * * *
>
> Senator Long. There has been some question raised with regard to *whether* you should use a

*shoreline definition* or a *coastline definition.* . . . [I]f there were to be a 3-mile limit, it would have to measure forward from the *boundary of inland waters*, which *is the distinction which is made between the word "coast" and the word "shoreline." The word "coast" means to measure from the boundary line of inland waters, while the word "shoreline" means to measure from the shore itself.*

I would point out to you that, *with regard to the State of Louisiana*, the Enabling Act that brought the State in refers to the southern *boundary as "extending to the said gulf* to the place of beginning, including all islands *within 3 leagues of the coast."*

*Congress cannot very well apply a shoreline definition to Louisiana after it has already fixed its boundary as a coastline, can it?*

Attorney General Brownell. We would want to give that a little study, Senator, before we answered that particular point. . . . [p. 939]

* * *

Senator Kuchel . . . *When you suggested the "shoreline"* be used as the basis for any congressional description, you would of course, *exclude* from your use of the word "shoreline" *any inland waters along any coastal State involved.*

Attorney General Brownell. *That is right.*

* * *

Senator Kuchel. [T]he bill introduced by the Senator from Florida defines the term "coastline" as meaning the line of ordinary low water along that portion of the coast which is in direct

contact with the open sea, and is a line marking the seaward limit of inland waters, which includes all estuaries, ports, harbors, bays, channels, straits, historic bays and sounds, and all other bodies of water which join the open seas. [p. 947]

* * *

[W]ould you object if these bills failed to describe in metes and bounds the lands that the congress is concerning itself with and used language generally as the Holland bill does?

Attorney General Brownell. We certainly could not object to that. *That is a matter of congressional policy.* We only make our suggestion for the purpose of certainty. [p. 948] (All emphasis supplied.)[18]

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[18]Both the House and Senate Committees which held hearings in 1953 on the Submerged Lands Bills explained the term "coastline" in their subsequent reports. The House Committee stated, *H.R. Rep. No.* 215, 83d Cong., 1st Sess. 4(1953):

> Section 2(b) defines "coastline" which is the baseline from which the State boundaries are projected seaward. It means not only the line of ordinary low water along the coast which directly contacts the open sea but it also means the line marking the seaward limit of inland waters.
>
> Inland waters include all ports, estuaries, harbors, bays, channels, straits, historic bays, sounds, and also all other bodies of water which join the open sea.

The Senate Committee explained, *S.Rep. No.* 133, 83d Cong., 1st Sess. 18 (1953):

> The words "which include all estuaries, ports, harbors, bays, channels, straits, historic bays, and sounds, and all other bodies of water which join the open sea" have been deleted from the reported bill because of the committee's belief that the question of what constitutes inland waters should be left where Congress finds it. The

Furthermore, in the House Judiciary Committee Hearing on August 24, 1949, the designation of the coastline under the 1895 Act was submitted in evidence. *See Hearings on H.R. 5991 and 5992 before Sub-Committee No. 1 of the House Committee of the Judiciary*, 81st Cong., 1st Sess. 74-75 (1949). In the Hearing before the Senate Committee on October 5, 1949, the method of designating and defining the coastline for the federal government under applicable Acts of Congress was thoroughly discussed with the committee. *See Hearings on S. 155 and other bills before the Committee on Interior and Insular Affairs of the Senate*, 81st Cong., 1st Sess. 179-80, 194-95 (1949).

In an attempt to establish the Inland Water Line as a line for navigational purposes only and to remove its jurisdictional significance, some people apply the misnomer "Coast Guard Line" to the Inland Water Line, or coast line. Such terminology is improper. The

committee is convinced that the definition neither adds nor takes away anything a State may have now in the way of a coast and the lands underneath waters behind it.

In this connection, however, the committee states categorically that the deletion of the quoted language in no way constitutes an indication that the so-called "Boggs Formula," the rule limiting bays to areas whose headlines are not more than 10 miles apart, or the artificial "arcs of circles" method is or should be the policy of the United States in delimiting inland waters or defining coastlines. The elimination of the language, in the committee's opinion, is consistent with the philosophy of the Holland bill to place the States in the position in which both they and the Federal Government thought they were for more than a century and a half and not to create any situations with respect thereto.

Act of Congress of February 19, 1895, authorized and directed the Secretary of the Treasury to designate and define "by suitable bearings or ranges with lighthouses, light vessels, buoys, or coast objects, the lines dividing the high seas from rivers, harbors, and inland waters." Subsequent Acts of Congress transferred this responsibility to the Secretary of Commerce and Labor (Act of February 14, 1903, 32 Stat. 829, Sec. 10), later redesignated the Secretary of Commerce (Act of March 4, 1913, 37 Stat. 736, Sec. 1), to the Commandant of the Coast Guard (Reorganization Plan No. 3 of 1946, 60 Stat. 1097, secs. 101-04),[19] and to the Secretary of the Treasury or to the Secretary of the Navy when the Coast Guard is operating in that department (Reorganization Plan No. 26 of 1950, 64 Stat. 1280); the responsibility was delegated by the Secretary of the Treasury to the Commandant of the Coast Guard (Treasury Department Order of July 31, 1950, 15 *Fed. Reg.* 6521). Thus it is clear that long before the Commandant of the Coast Guard had any authority under the Act of February 19, 1895, the United States had been concerned with "lines dividing the high seas from rivers, harbors, and inland waters" and with distinguishing between waters outside and inside the line. Only recently did the Coast Guard receive any authority to designate and define this line.

The statement of the Commandant of the Coast

[19]It is to be noted that the 1895 Act lines had been drawn around major segments of Louisiana's coast for 51 years before the authority was first transferred to the Coast Guard and for 43 years the authority was in the Department of Commerce and Labor or Commerce.

Guard in his December 8, 1953, report on boundary lines of inland waters, 18 *Fed.Reg.* 7893, that "these lines are not for the purpose of defining Federal or State boundaries, nor do they define or describe Federal or State jurisdiction over navigable[20] waters," may describe his intent, but not his directive. Additionally, in the Code of Federal Regulations, 33 *C.F.R.* 82.1 (January, 1967), the Commandant very properly says,

> *The waters inshore of the lines described in this part are "inland waters" and upon them the inland rules and pilot rules made in pursuance thereof apply. The waters outside of the lines described in this part are the high seas and upon them the international rules apply.* . . . (Emphasis supplied.)

On page 23 of Vol. 1, *Shore and Sea Boundaries*, Shalowitz states, "The common legal feature of *all inland waters* is the *complete sovereignty which a nation exercises over them*, the same as it exercises over its land territory." (Emphasis supplied.)

[20]Under the law it was the Commandant's duty simply to "designate and define" that coast line, and not adjudicate upon its legal significance. However, in a direct sense, the quoted remarks may have meaning, but not the significance the Justice Department attaches to them. The federal-state boundary is not the coast line or outer limit of inland waters. The boundary is at least three miles seaward of the coast line or inland waters. So, of course, the boundary was not directly fixed; the coast line or inland water limits were designated and defined. Of course this is the baseline for additional geometric calculations involved in describing the state-federal boundary. Whether the boundary was three leagues or three miles from the inland waters was not a question within the authority of the Coast Guard Commandant to designate or define under the 1895 Act, so he clearly could not decide this unsettled question in 1953.

Further support for the jurisdictional nature of the Inland Water Line is found in the fact that since the passage of the 1895 Act, Congress has made reference to its definition of inland waters in various other acts. *See* Officers Competency Act, Act of July 17, 1939, 53 Stat. 1049, 46 U.S.C. 224(a) 12; Coastwise Load Line Act, Act of August 27, 1935, 49 Stat. 888, 46 U.S.C. 88; Inspection of Seagoing Vessels over 300 Gross Tons, Act of June 20, 1936, 49 Stat. 1544-45, 46 U.S.C. 367.

In addition to Congressional recognition of Louisiana's coast line, the existence of a seaward water boundary has been judicially recognized. The Courts have held that Louisiana's southern boundary is not a line along the shore. This Court, in *Louisiana v. Mississippi*, 202 U.S. 1, 43-44, decreed that Louisiana's eastern boundary is a water boundary following the deep-water channel, saying:

> The eastern boundary thus described (in the Enabling Act) is a water boundary, and, in extending this water boundary to the open sea or Gulf of Mexico, we think it included the Rigolets and the deep-water sailing channel line to get around to the westward. A little over one year later Louisiana was created a state by the Act of Congress of April 8, 1812, with this identical eastern boundary line; and the addition of territory by the act of April 14, 1812, did not affect the deep-water sailing channel line as a boundary.

The deep-water channel east of the Chandeleur Islands and around the Mississippi Delta to the west coincides with the Inland Water Line designated and

defined by Congress and accepted and approved by Louisiana as its coast line in accordance with the Submerged Lands Act. This water boundary, described by this Court in *Louisiana v. Mississippi*, is shown on diagrams numbered 1, 2 and 5 following the text of 202 *U.S.* 34-35. Although the Court stated that questions concerning the maritime belt required no special consideration in that case, it nevertheless had Louisiana boundaries under consideration and emphasized throughout its opinion and decree that Louisiana's boundary followed the deep-water sailing channel. The Court called attention to facts supporting this opinion on pages 55 and 56 of 202 *U.S.*, thus:

> The United States Geological Survey published in the year 1900 a bulletin devoted to a discussion of the boundaries of the states and territories, and giving a history of changes as they may have occurred. The third edition was published in 1904. Gannett's Boundaries, 58th Congress, 2d Session, H.R. Doc. 678.
>
> In the opinion of that Bureau, Louisiana was originally bounded by the deep-water channel and is the owner of the area in dispute to-day, according to the report and the accompanying sketches.

In 1844 the United States, apparently under the direction of the Secretary of State, prepared a map showing "the limits established by the Treaties made by the United States and Great Britain in the years 1783 and 1842," [21] and specifically outlines the territory included in:

[21] Records of United States Senate. Map of the United States without title, printed as Document "K", skeleton map

The Treaty of 1795 with Spain
The Treaty of 1803 with France
The Treaty of 1819 with Spain.

The lines drawn on this map include territorial waters several leagues from coast and seaward beyond the Inland Water Line fixed pursuant to the 1895 Act of Congress.

Long prior to the discovery of mineral wealth in the submerged lands offshore from Louisiana, the various departments of the federal government then charged with the responsibility of enforcing laws of the United States within its jurisdiction, or determining the extent of that jurisdiction, recognized that the extent of inland waters extended approximately as far seaward as the present Inland Water Line. This is most emphatically true of *the first line designated off Louisiana shortly after enactment of the Act of February 19, 1895* (*see Treasury Department Circular* No. 127, July 13, 1895). As more fully developed subsequently in this brief, and especially in the section dealing with the history of the Mississippi Delta area in part 2, it can be accurately stated that the Secretary of Commerce and various other agencies charged with the responsibility of delimiting the extent of inland waters under the Act of February 19, 1895, all treated the bulk, if not the entirety, of the complex shallow and shelter waters of the Mississippi Delta in the eastern portion of our coast as being within the inland waters of the United States. It will be hereinafter demon-

showing treaty limits, to accompany *Senate Document* 7, 28th Cong. 2nd Sess. *See* Map, Exhibit 69.

strated that the Coast Guard, the Customs Service, the Justice Department itself, and even foreign nations have all recognized that the lines *repeatedly* designated and defined off the coast of Louisiana as constituting the limit of inland waters did so in the full jurisdictional sense. The Commandant of the Coast Guard in 1953 merely completed the work begun in 1895. *See* Memorandum in support of Motion by the State of Louisiana for entry of Supplemental Decree No. 2, pp. 17-20 and Memorandum in support of Response and Opposition of the State of Louisiana to the Counter-Motion by the United States for further discussion and authorities.

## II. The Inland Water Line is the Outer Limit of Inland Waters in a Jurisdictional Sense.

### A. Congress Intended That the Inland Waters Mentioned in the Act of February 19, 1895, be Inland Waters in a Jurisdictional Sense and That the Authorized Agent was to Determine Those Waters.

The background and history of the official action of the United States shows the clear intent of Congress to determine the extent of inland waters as a basis for exercise of sovereignty over those areas, and in this connection to establish local rules to govern all navigation within that area. Congress clearly intended to apply inland rules, as distinguished from international rules, only to the jurisdictional inland waters of the nation, and the Act of February 19, 1895, was adopted with the definite objective of fixing the outer limits of "inland waters" in order that sovereignty

jurisdiction might be exercised in the area landward of such limits.

1. The Congressional Intent

Throughout the period 1880-1897 it was plain to Congress that the application of local rules at variance with international rules was at least limited to the jurisdictional waters of the nation adopting the local rules, if not more strictly limited to inland jurisdictional waters. The Navy Department was chiefly responsible for enunciating this idea to Congress in the early part of this period. The correspondence and activities of the Navy Department and its advice to the Congress shows clearly that the Congress was fully cognizant of the fact that the statutes of the United States could be applied only in the jurisdictional waters of the nation, in so far as they conflicted with laws of the high seas as consented to by the maritime nations of the world,[22] and were made applicable to foreign vessels.

Fully aware that the International Rules were obligatory on the high seas and that local rules could originally be applied to jurisdictional waters (prior to International Rules agreement even more restrictively permitting local rules only as to inland waters), Congress decided that the local rules should apply not to the full extent of those jurisdictional waters, but only to inland waters of the United States and that the International Rules would apply to the high seas and to the territorial sea but not to inland waters. This intent

[22] *See* notes 39 to 42, *infra* and related text.

was the same when the Inland Water Line Act was adopted in 1895 and the waters were defined, as may be seen from the legislative history.[23]

The delegates to the 1889 Marine Conference indicated on several occasions that they had the same basic intent as was held by Congress: that no nation could make rules governing other flag vessels on the high seas, and that a state desiring to make local rules at that time could do so for the waters under its jurisdiction only, but was not required to make local rules.[24]

In the International Rules proposed by the Conference, Article 30 finally excepted from applicability of the rules only the ports, harbors and inland waters subject to local rule. *See* note 42 *infra*. There have been numerous international Safety of Life at Sea Conferences subsequently, which proposed revisions that were enacted by simultaneous international agreement on numerous dates between 1889 and the present. Always, the resultant International Rules (agreed to through the International Maritime Consultative Organization) excepted only inland waters, but for provisions such as that related to seaplanes which also excepted the territorial sea. *See* notes 30 and 31 *infra* and related text.

Congress had these principles and discussions in mind when it adopted the 1895 Inland Water Line Act, and they indicate the reasons why it had no qualms about applying the inland rules as enacted by the 1895

[23] *See* note 40 *infra* and related text.

[24] *See, e.g.*, the United States delegates remarks, note 42 *infra*.

statute *not only to vessels of the United States but to all vessels* crossing the line drawn by the Secretary of the Treasury. Thus, while the International Regulations of 1890,[25] applied specifically to United States vessels, the local rules provided that they were to be followed on the harbors, rivers, and inland waters of the United States.[26] The rules could apply to all vessels *because the waters enclosed by the Inland Water Line were the jurisdictional inland waters of the United States.*[27]

The regulation of navigation is one of the principal reasons for the recognition and exercise of jurisdiction over inland waters and territorial seas bordering this nation's shores. Such regulation is not only necessary for safety and commerce but essential to security and protection from foreign espionage and hostile invasion.

To subject coastal fishing operations in the shallow waters of the complex shoals, indentations and channels shoreward of the inland water line, to a dual domestic and international legal regime would seriously damage the fishing economy of the entire Gulf Coast region and destroy vital fishing rights long

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[25]26 Stat. 320 (1890).

[26]28 Stat. 672 (1895). For the reasons which led to the application of the inland rules to foreign as well as American vessels, see the statement of the House Conference Committee, 27 *Cong. Record* 2059 (1895).

[27]For a modern affirmation of this conclusion, *see Griffin, Collisions* 12 (1949), where the author remarks, "The Inland Rules apply to vessels of any nationality, since the United States has full jurisdiction over the waters in question."

recognized as exclusively American. See Appendix E (re: hearings on a proposal to change the Inland Water Line) for evidence on this and other facts now under discussion.

Inland jurisdiction is essential to avoid chaos in the shrimp and oyster industry. Customs, sanitary, and immigration regulations relate directly to navigation on the inland waters of the United States, and jurisdiction over the navigation of these inland waters is essential to the regulation of these attributes of sovereignty. The rules of navigation over inland waters provide penalties consisting of fines and seizures of vessels (33 U.S.C. 158, 159). The District Courts of the United States have original and exclusive jurisdiction over the enforcement of these rules (28 U.S.C. 1333, 1355). Accordingly, when this nation establishes municipal regulations controlling navigation over its inland waters delineated pursuant to the Act of 1895, it is exercising sovereign jurisdiction over these waters. There can be no doubt that it is the jurisdictional character of the coastal waters that determines the right of a coastal state to regulate navigation. As Chief Justice Marshall stated in *United States v. Bevans*, 16. U.S. (3 Wheat.) 336, 386-87:

> What then is the extent of jurisdiction which a state possesses?
>
> We answer, without hesitation, the jurisdiction of a state is co-extensive with its territory; co-extensive with its legislative power.
>
> It is clear, therefore, that the intent of Congress

was to apply the Inland Rules to the jurisdictional inland waters of the United States, and the Secretary of the Treasury was specifically granted the authority to determine these waters. Section 2 of the Act of February 19, 1895, 28 Stat. 672 (1895), read as follows:

> *The Secretary of the Treasury is hereby authorized, empowered, and directed* from time to time *to designate and define* by suitable bearings or ranges with lighthouses, light vessels, buoys or coast objects, *the lines dividing the high seas from* rivers, harbors, and *inland waters.* (Emphasis supplied.)

The Congress, by the very terms of the Act, invested the Secretary with the legal power and authority to designate and define the limits of the inland waters of the United States in the jurisdictional sense intended by the statute.

Congress could not have intended another result. Having determined that all vessels crossing the Inland Water Line would be subject to the jurisdiction of the United States, it is only reasonable to conclude that Congress would have clothed someone with the duty of determining where these jurisdictional waters were. The interests of safety of navigation required greater precision in determining inland waters than the bald term itself or a set of abstract and sometimes contradictory principles for determining inland waters. It was to clear up any confusion as to the actual location of inland waters that Section 2 of the 1895 Act was enacted; to fail to give the Secretary of the Treasury the authority to determine the location

of these jurisdictional inland waters would merely have compounded the confusion. The Secretary was not given a mere mechanical authority; his power was to designate and define the inland waters of the United States insofar as it was necessary to make that determination.

The first lines drawn by the Secretary of the Treasury included lines drawn around the complex, shallow and sheltered waters of the Mississippi River Delta area.[28] As these lines encompassed the approaches to the two great passes of the Mississippi River, it must be assumed that vessels of foreign nations traversed it many times. We have discovered no indication that any of these nations ever objected to the assertion of the jurisdiction of the United States behind the line. This lack of objection in the face of the rule that navigation could not be regulated outside the jurisdiction of the coastal states plainly shows that foreign nations felt these waters to be jurisdictional waters of the United States and therefore acquiesced in the exercise of jurisdiction over them by the United States. Moreover, the nature of the jurisdiction asserted and acquiesced in was clearly "inland waters" jurisdiction.

The law of nations is "to be tried by the test of general usage. That which has received the assent of all must be the law of all." *The Antelope*, 23 U.S. (10 Wheat.) 66, 120-121, *Hilton v. Guyot*, 159 U.S. 113, 163-4, 214-15.

[28] *See Treasury Department Circular* No. 127, July 13, 1895.

It should be pointed out that Section 2, 1895 Act, remains as written, except for the change of the executive department authorized to determine inland waters.[29] The International Rules and the Inland Rules have been amended from time to time, without changing their scope, except in one important respect. In 1951, the International Rules were made applicable to all aircraft of United States registry, but were not to be applied to the *inland waters* of the United States, *or to the territorial waters of the United States, in so far as aircraft were concerned.*[30] Here is a distinct recognition of the division of waters into high seas, territorial waters, and inland waters. Where vessels were concerned, only inland waters were excepted from the operation of the International Rules; where aircraft were concerned, both inland waters and territorial waters were excepted from the Rules.[31]

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[29]The authority to draw the Inland Water Line was transferred to the Secretary of Commerce and Labor in 1903, 32 Stat. 829; to the Secretary of Commerce in 1913, 37 Stat. 736; and to the Commandant of the Coast Guard in 1946, 60 Stat. 1097.

[30]65 Stat. 406, 420 (1951), 33 U.S.C. 143, 147.

[31]*See* letter from Chairman of Civil Aeronautics Board to the Chairman of the Senate Committee, Sept. 4, 1951, reproduced in *Sen. Rep. No.* 838, 82d Cong., 1st Sess., (1951). The Chairman stated, at p. 8,

> The legislation *retains* those provisions in which the Board has a primary interest, particularly those which *exempt aircraft operating on the inland and territorial waters of the United States* thus assuring that the new regulations will leave undisturbed the jurisdiction of the Board with respect to aircraft operating on those waters. (Emphasis added.)

Thus, although it is clear that the Congress intended that the waters within the lines designated pursuant to the Act of February 19, 1895, as amended, would be jurisdictional waters of the United States and that, therefore, the designation and definition of lines pursuant to said act constituted an assertion of jurisdiction over such waters, it is equally clear that present Justice Department efforts to rationalize the regulation of navigation as incidental to powers over the territorial sea, must fail. *See* Memorandum of the United States in support of its Motion for Entry of Supplemental Decree No. 2, p. 48. In the above legislation concerning aircraft rules that fact is made quite clear. However, it is not only in recent times that Congress has made clear its intention that the inland waters to be designated pursuant to the Act of February 19, 1895, would be inland waters as distinct from territorial sea. The early history of the legislation makes this equally clear by unquestionably establishing that the inland waters to which the inland rules were to apply were not the full extent of the jurisdictional waters of the United States, but were only those portions which are *inland waters* of the United States. *See* discussion which follows in the next sub-section.

Section 2 of the Act of February 19, 1895, stands today, still imbued with the scope and effect given it by Congress. Louisiana specifically accepted and approved as its coast line, by Act 33 of 1954, the very line designated and defined in 1953 by federal agencies under authority of the 1895 Act. This is Louisiana's coast line—her seaward limit of inland

waters—for purposes of the Submerged Lands Act, and for other purposes such as regulating fisheries and other uses of the people by State Law.

2. History of International and Inland Rules Legislation

The history of the development of the Inland Rules[32] and of the International Regulations for the Prevention of Collisions at sea[33] demonstrates clearly that the Inland Rules were adopted to be applied to jurisdictional inland waters, and that the agencies authorized by Congress from time to time were to have the power to designate and define the waters affected. This history of the International and Inland Rules during the second half of the nineteenth century fully supports the conclusion that the Inland Water Line, designated and defined pursuant to the Congressional Act of 1895, was to be jurisdictional in character, and was to determine the outer limits of *inland waters* as a physical and factual matter. It was quite plain that the "inland waters" of the Rules of the Road legislation were the very same waters which are inland waters in the full jurisdictional and territorial sense, as distinguished from the territorial seas and the high seas. Since the Inland and International Rules legislation dovetails, brief consideration of the history of both is warranted.

The 1895 legislation was but one of a series of legislative acts, during the last half of the nineteenth

[32]33 U.S.C. 151 et seq.
[33]33 U.S.C. 1501 et seq.

century, which evolved the dual system of inland and international rules. Although there is an earlier United States and foreign history of scattered private and/or domestic legislation or regulations providing navigational rules, the mid-nineteenth century saw England taking the lead in causing other nations to legislatively adopt uniform rules like her own.[34] This led the United States to adopt rules legislation in 1864[35] which generally followed the developing international pattern for uniformity and was apparently applicable to all waters.

By 1880, most maritime nations had revised their rules, in an effort at uniform improvement, and England mistakenly thought the United States had formally assented to these rules.[36] This left the United States with statutory rules purportedly applicable to all waters, such rules being at variance with the rules of all other major maritime nations who were developing an international law of the sea, by the adoption of uniform rules. Congress studied the problem for some few

[34] *House Ex. Doc.* No. 55, 46th Cong. 2nd Sess. (Serial No. 1925) (1880), reviews this early history.

[35] 13 Stat. 58 (1864). This act was amended and incorporated as Section 4233 of the United States Revised Statutes in 1874, together with certain provisions of an Act of February 28, 1871, Chapter 100, 16 Stat. 440 (1871). The 1871 legislation also authorized special pilot rules by the Board of Supervising Inspectors for domestic private vessels only and this authorization being incorporated in Sections 4412 and 4413.

[36] *See Senate Ex. Doc.* No. 160 at 1, 6, 7, 12 and 13, 47th Cong., 1st Sess. (Serial No. 1991), for documents establishing this history.

years, the studies[37] finally culminating in 1885 legislation which adopted the first set of rules clearly designed and designated as "International Rules," and establishing the pattern thereafter followed, of excepting from the International Rules, inland waters for which local rules had been adopted.

Congressional intent reflected by international and inland rules legislative history shows this Act of March 3, 1885,[38] was plainly passed on the basis of a Congressional understanding that Congress then had the power, in compliance with international law, to except from the International Rules the full extent of the coastal waters under U. S. jurisdiction;[39] but Con-

[37] *See House Ex. Doc.* No. 55, 46th Cong. 2d. Sess. (1880); *Senate Ex. Doc.* No. 160, 47th Cong. 1st Sess. (1882) and *House R. Report* No. 731, 48th Cong., 1st Sess. (1884).

[38] 23 Stat. 438 (1885). This statute's preamble provided the "Revised International Rules" were to be followed by "all public and private vessels of the United States upon the high seas and in all coast waters of the United States, except such as are otherwise provided for." Article 25 of its Rules provided "Nothing in these rules shall interfere with the operation of a special rule, duly made by local authority, relative to the navigation of any harbor, river or inland navigation." The repealing provision, Section 2, repealed all laws inconsistent therewith for all U. S. vessels "upon the high seas, and in all coast waters of the United States . . . *except as to . . . harbors, lakes, and inland waters of the United States.*" (Emphasis supplied.)

[39] The Congressional understanding that it had power to except the full extent of U. S. jurisdictional waters from the International Rules is evident in correspondence it obtained in the course of the studies previously mentioned. There was a school of thought, clearly brought to the attention of Congress, that after the other nations of the world had changed the rules, the 1864 Act rules would only be applicable within U. S. jurisdictional waters, because the international law of

gress, instead, intended to except only "the inland waters." Thus, the territorial sea lying between inland waters and international waters, was combined with international waters and subjected to the high seas regime.[40]

Foreign vessels have a right of innocent passage in the territorial sea. Since such international navigation is involved on the territorial sea, it is logical to include such waters with the international rules regime.[41]

The post 1885 history during this, the formative period of the legislation, reinforces the conclusion that inland waters for rules of the road purposes and for general jurisdictional purposes, were identical. At an 1889 International Marine Conference held in Wash-

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the sea had been modified even though Congress had not acted, and Congress, to comply with the new international law of the sea, could only make rules at variance with the international rules for U. S. jurisdictional waters. *See H.R. Report* No. 731, at 3, 4, and 6, 48th Cong., 1st Sess. (1884); *H.Ex.Doc.* No. 55, 46th Cong., 2d Sess. (1880); *Sen.Ex.Doc.* No. 160 at 46, 47, 47th Cong., 1st Sess. (1882).

[40]One of the technical studies considered by Congress was a letter of a Lieutenant Very of the Navy Department, dated January 12, 1882, which recommended that the new rules should be adopted but the old 1864 rules retained as municipal law for inland waters. He pointed out that "Rules for the high seas must be few in number and rigid in character. . . . The same rules (international rules) must apply to our coast waters to prevent confusion, for there are no guides to the mariner to show him the boundary between American waters and the high seas. . . ." *H.R.Report* No. 731 at 4, 48th Cong., 1st Sess. (1884). His suggestion, accepted in the committee report, was that the new international rules be made applicable to U. S. vessels everywhere "except in the inland waters of the United States." *Id.* at 2.

[41]See note 40.

ington to consider revision of the international rules, the same basic principle was recognized, that is, municipal rules different from the international rules were *only for inland waters*, and the international rules were for the high seas and waters connected therewith, except for inland waters.[42]

The 1890 legislation for new international rules followed the Conference's recommendations, including the article to except ports, harbors and inland waters,[43] which were subject to local rules. However, to avoid any implication that the 1890 international rules legislation had repealed the inland rules,[44] the Secretary of the Treasury proposed the 1895 legislation to clearly adopt the inland rules for inland waters in revised form, in accord as far as possible with the new inter-

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[42]Mr. Goodrich, the chief U. S. delegate, summarized the concensus of this conference well, when he stated:

> We should make a code of laws applicable *to the whole sea*, to the whole maritime commerce of the world. . . . If any nation wants to make *local exception for internal waters*, then that nation which has the waters under its control can make the exception. (Emphasis added) *Sen.Ex.Doc.* No. 53 at 66, 51st Cong., 1st Sess.

Accordingly, Article 30 was included in the proposed new international rules:

> Nothing in these rules shall interfere with the operation of a special Rule, duly made by local authority, relative to the navigation of any harbor, river or inland waters. *Id.* at 461.

[43]26 Stat. 320 (1890).

[44]*See* letter of Attorney General to the Secretary of the Treasury dated December 22, 1894, in *H.R.Rep.* No. 1615 at 6, 7, 53rd Cong., 3rd Sess. (1895), which apparently led the Secretary of the Treasury to believe the inland rules legislation of 1864 had been accidentally repealed.

national rules.[45] It was made clear in this legislation's history that *Congress had a policy against having two different sets of rules applicable in the same waters.*[46] This absolutely defeats the Justice Department's efforts to overcome the illogic of its position by making the highly dangerous—to life and property—argument that the inland rules are "voluntary" for foreign vessels in some of the waters behind the Inland Water Line. See U.S. Memorandum of January 1968, p. 48. Human life should not be so endangered.

Finally, in 1897, when revisions to the inland rules legislation was under consideration, Congress again made clear that the type of inland waters it had reference to in the inland rules legislation were the same types of coastal inland water bodies long recognized as inland waters in the full jurisdictional and

[45] *Id.* at 3.

[46] "Maritime interests in New York . . . concluded that it is better to require seagoing vessels to change their rules and conform to the local regulations upon entering harbors, rather than to allow them, as first proposed, to come up to their wharves under the deep-sea rules, *which would have involved two sets of rules in operation* in the harbors." 27 *Cong. Record* 2059 (1895). The policy of Congress, to avoid having two sets of rules operative on the same waters, was also reflected in 1895 legislation which postponed the effective date of the 1890 modifications to allow time for other nations to put like rules changes for the high seas into effect at the same time. *See* 28 Stat. 680 (1895) and *H.R.Rep.* No. 1911, 53rd Cong., 3rd Sess. (1895). This same policy had been followed in all subsequent revisions. To avoid having vessels follow different rules on the same waters, the nations—through the International Maritime Consultative Organization—put rules changes into effect simultaneously. So there is international consensus supporting this policy.

territorial sense of that term.[47] By the time of this 1897 revision of the inland rules, the 1895 authority for the Secretary of the Treasury to designate and define the extent of the ports, harbors and inland waters had gone into effect, and lines had been drawn by him for the eastern portion of Louisiana, which recognized that the great bays of the Mississippi Delta including East Bay, were inland waters.[48]

Congress, in revising the inland rules in 1897, but leaving the authority of, and the designations made by, the Secretary in effect, was informed in the course of its debates, that the "inland waters" which the Secretary had by then designated and defined should be known as inland waters of the United States, and were of the type like Chesapeake Bay and Long Island Sound.[49]

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[47]One Senator stated: "There was a difference between the rules established for the ocean and the rule established for inland waters; and by inland waters I do not mean lakes and rivers, for they have a code by themselves, and are not affected by it, but Chesapeake Bay, for instance, and Delaware Bay, and New York Harbor." 30 *Cong. Record* 932 (1897). Of course, lakes and rivers were also inland waters, but this makes plain that Congress was concerned with the limits of the nation's inland waters limit at the coast.

[48]*See* Exhibit 7.
Thus, East Bay and other delta waters were likened unto clearly recognized inland waters. See note 47 and 49.

[49]"Congress passed an act in 1895 which allowed the Secretary of the Treasury to designate what should be known as the inland waters of the United States. The Secretary has made designations from time to time; and these inland waters includes such great bodies as the Cheasapeake Bay, Long Island Sound, and *other like bodies of water.*" (Emphasis added.) 30 *Cong. Record* 1394 (1897).

Nothing has occurred in the subsequent history of this legislation, now incorporated in the U.S. Code at 33 U.S.C. 151, to show any change in Congressional understanding or intent as to the type of waters which the designations and definitions would enclose. Indeed, as noted earlier, modern rules of the road legislation innovations to deal with seaplanes, has reinforced the original understanding of Congress that the "inland waters" were distinct from the territorial sea.[50]

B. Louisiana's Position With Respect To The Inland Water Line Is Consistent With International Law.

It is fundamental that a coastal nation does not have jurisdictional power to regulate foreign vessels on the high seas. Other nations do not and could not interfere with a coastal nation exercising control of its inland waters for all purposes.

Therefore, if this Court holds that the inland water line is not indeed the outer limit of inland waters, it will have held that the United States for many, many decades has been violating its International obligations.

The Government's attempt to escape this result appearing on page 48 in footnote 1 of its January 1968 memorandum fails to do so. Although the convention on the territorial seas and the contiguous zone permits coastal nation regulation of navigation by foreign vessels in the territorial sea, Articles 17 and a subsequent article of that convention make clear that other International agreements or conventions are left

[50] *See* notes 25 to 27 *supra* and related text.

in force. International Rules of the Road are created by and indeed constitute international agreements which provide that the International Rules are to be applicable on all waters with the sole *exception* that *domestic rules* may be *applied to inland waters.*

Article 17 reads as follows:

> Foreign ships exercising the right of innocent passage shall comply with the laws and regulations enacted by the coastal State in *conformity with* these articles and *other rules of international law* and, in particular, with such laws and regulations relating to transport and navigation. (Emphasis supplied.)

Thus, *The Delaware*, 161 U.S. 459, discussed in some detail on pages 20, 21, and 58 of Louisiana's memorandum of May, 1968, which clearly held that waters behind the 1895 Act lines are "inland waters of the United States" cannot be disposed of in the manner suggested by the Government nor without now declaring that the United States has improperly exercised authority over International waters and over the territorial sea. Recognition of the Inland Water Line as forming the base from which to establish a boundary demarking the submerged lands from which the States will benefit from the outer continental shelf land from which the Federal Government will benefit is of concern to the United States and its States only, for no one else has any claim to either of these areas. The Court recognized this in the 1960 decision. We do not believe that it should be presumed that the action of any agency of the United States is invalid and

subject to attack by another agency of the United States. The contrary should be presumed: the line is valid as enclosing the jurisdictional waters of the United States.[51]

> An Act of Congress ought never to be construed to violate the law of nations if any other possible construction remains. *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cr.) 64; *Talbot v. Seeman*, 5 U.S. (1 Cr.) 1.

And we do not believe that the Justice Department is warranted in asking the Court to declare that territory long recognized, without dispute, as American territory, is no longer so.

The Coast Guard itself, at a time when the sub-

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[51]To hold otherwise, and use the provisions of the Convention on the Territorial Sea to defeat the legality of the Inland Water Line, would not only be legally erroneous, but would destroy a basis the court used for applying that Convention in the California case. To rule against the Inland Water Line would necessitate a decision embarrassing to the United States in its foreign relations by indirectly convicting the nation of international illegalities. The United States has been obliged vis a vis foreign nations, to have international rules in effect on all except inland waters. To put international rules in effect on the waters behind the Inland Water Line would wreck the coastal economy. Since a decision to the effect that the Inland Water Line is inconsistent with the true location of inland waters would be rendered on the basis of international criteria, it could not be rationalized on the basis of domestic law, as with the Texas-Florida three league decision. The *only* way to avoid international complications is to do as Louisiana urges—to ground this decision on purely domestic legislative interpretation, construing the Submerged Lands Act as having intended to adopt the Inland Water Line, not only for pari materia reasons, but because the practical need for a stable boundary demands this line.

merged lands offshore had not assumed their mineral importance, maintained that the Inland Water Line enclosed jurisdictional waters of the United States. In 1925, orders were issued to the Coast Guard fleet on the subject, "Marginal Waters of the United States." The orders read in part:

> 1. Several inquiries have recently been received concerning the subject and in order that uniform practice may obtain the definition of this office is given below. *This construction will be followed until the Service is otherwise advised.*
>
> (a) The "coast" of the United States is at the mean lowwater contour line as shown on the charts, except
>
> (b) Where bays and estuaries are involved, which are not more than 20 miles in width—head-land to head-land—the "coast" is determined by a straight line drawn from head-land to head-land and tangent to them.
>
> (c) When contiguous to the United States all rocks, shoals, and mud lumps which are bare at mean low water and all permanent structures, such as lighthouses and beacons, are territory of the United States.[52]

[52]Paragraphs (b) and (c) quoted above also support Louisiana's alternative contentions in Part II of this brief relating to East Bay and other sectors of the Mississippi Delta area. East Bay would have been a haven for smugglers when smuggling was such a problem. It is obvious this area was in the minds of the Coast Guard, Justice Department and customs officials to whom the order was communicated because mud lumps are mentioned and the only place where they occur is at the mouth of the Mississippi River. Note that the Bay test employed no geometric area formula and the closing line distance was sufficient for all of East Bay to be recognized as a bay.

> (d) The territorial waters of the United States comprise all waters within a radius of three nautical miles from the "coast" of the United States as above defined and *all waters inshore of the lines designated and defined by the Secretary of Commerce in accordance with the Act of Congress of February 19, 1895, as limiting the "inland waters" of the United States.* (Emphasis supplied.)

On March 1, 1932, the Treasury Department repeated the definition of "territorial waters" in an official publication entitled "Law Enforcement at Sea Relative to Smuggling." On page 2 of that publication "territorial waters" are thus defined:

> The territorial waters of the United States comprise all waters extending 3 miles from the mean low-water contour of the coast and all waters inshore of the lines designated and defined by the Secretary of Commerce in accordance with the act of February 19, 1895, as limiting the "inland waters" of the United States.

While this interpretation reveals a misunderstanding of the true authorization of the 1895 Act, *i.e.*, to designate and define "*inland waters*," it does very clearly show that the Treasury Department regarded the waters within the Inland Water Line as jurisdictional in nature and attached full jurisdictional significance to the Inland Water Line. No other conclusion can be drawn from the statement. The Treasury Department here was referring to "territorial waters," not for navigational purposes only, but in a context of enforcement of criminal statutes of the United States. The government now is alleging that the Inland Water Line is for navigational purposes

only[53] and thus has no jurisdictional significance[54] but at an earlier time the Treasury Department attached jurisdictional significance to the lines drawn pursuant to the Act of February 19, 1895. That the publication referred to the inland waters as "territorial" does indicate a misunderstanding on the part of the Treasury Department, but it cannot hide the fact that the waters were considered as jurisdictional waters of the United States.

Jurisdiction to regulate navigation can only be claimed on sovereign waters; it cannot be claimed on the high seas. On this point the Conventions are express. Article 6 of the Convention on the High Seas applies the general principle:

> Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in these articles, shall be subject to its exclusive jurisdiction on the high seas.[55]

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[53]This fact is simply not true as other statutes are keyed to the same line and they are not navigational statutes. *See* Act of July 17, 1939, 53 Stat. 1049, 46 U.S.C. 224 (a) (12); Act of August 27, 1935, 49 Stat. 888, 46 U.S.C. 88; Act of June 20, 1936, 49 Stat. 1544-45, 46 U.S.C. 367.

[54]This conclusion of the United States is unfounded. To establish, promulgate, and apply navigational regulations to an area of waters, the nation taking the action must have jurisdictional authority over the waters.

[55]The Chairman of the United States delegation to the United Nations Conference on the Law of the Sea has supported this principle strongly, *see Hearings, Committee on Foreign Relations, United States Senate*, 86th Cong., 2d Sess., 1960, on Executives J, K, L, M, & N, p. 76:

> This convention says that in the interest of keeping ships

Article 10 of the Convention of the High Seas makes plain that a nation may make collision prevention laws for its own vessels on the high seas; and that even then they must be the International Rules.[56]

There are certain acts of jurisdiction that may be asserted without claiming the waters on which they apply to be the general jurisdictional waters of the coastal state. These acts are expressly set forth in Article 24 of the Convention on the Territorial Sea and

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going around the world, in the interests of mobility and in the interests of uniformity, that only the state, the nation under whose flag the ship is registered has jurisdiction.

[56]Article 10 of the Convention on the High Seas provides,

> 1. Every state shall take such measures for ships under its flag as are necessary to ensure safety with regard *inter alia* to:
>
> (a) . . . the prevention of collisions.
>
> * * *
>
> 2. In taking such measures each state is required to conform to generally accepted international standards and to take any steps which may be necessary to ensure their observance.

Delegate Riphagen of the Netherlands explained this article at the 1958 Conference on the Law of the Sea. He remarked, IV *Official Records, United Nations Conference on the Law of the Sea* 51 (1958):

> [A]ny attempt at codifying the Law of the Sea would be incomplete without a provision insuring that the flag state exercised effective jurisdiction over its ships *in an area where no state possessed sovereign rights.* (Emphasis supplied.)

Thus, the Conferees, in adopting Article 10, were solving a problem arising due to the fact that no single nation could require the ships of another nation to follow its navigation rules on the high seas.

the Contiguous Zone; navigational regulation is not one of them.[57]

It is interesting that at the 1930 Conference for the Codification of International Law, the United States proposed a contiguous zone article that would have permitted navigation regulation outside of jurisdictional waters.[58] The proposal was not adopted.

It follows from the above discussion that the Inland Water Line is unquestionably a line which is an assertion of sovereign inland water jurisdiction over the waters it encloses whether or not it was for navigation purposes. Consequently, Congress must be

[57]Paragraph 1 of Article 24 states,

> In a zone of high seas contiguous to its territorial sea, the coastal state may exercise the control necessary to:
>
> (a) Prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea.
>
> (b) Punish infringement of the above regulations committed within its territory or territorial sea.

When the International Law Commission submitted its draft of Article 24, it pointed out that the waters of the contiguous zone remain a part of the high seas,

> and are not subject to the sovereignty of the coastal state, which can exercise over them only such rights as are conferred on it by the present draft or are derived from international treaties.

2 *Yearbook of the International Law Commission*, 1956, 294, Comment 1 to draft Article 66. *Cf.* Comment 7. Navigational regulation is not mentioned in the draft, nor is there an international treaty allowing the United States to regulate the navigation of foreign vessels on the high seas. *A fortiori*, navigational regulation is not permitted on the high seas.

[58]*See* 3 *Acts of Conference for the Codification of International Law* 195, U. S. proposal to Basis of Discussion No. 5 (1930).

deemed to have intended to give its authorized agent the power to determine the extent of these inland waters, and the legality of that agent's action cannot be attacked in these proceedings.

### III. The Congressional Act of February 19, 1895, as Amended, Provided a Definition of Inland Waters, Which Has Been Readopted by Other Congressional Acts, and is the Subject of the Only Decision of this Court Adjudicating the Outer Limit of Inland Waters.

In the attempt to determine the intent of a legislative body as to the meaning of any term involved, fundamental principles of statutory construction require consideration of other acts of the same legislative body relating to the same subject matter or having the same scope. This doctrine of laws in "pari materia" is applicable here to furnish a further guide as to what Congress meant by the term "inland waters" as used in the Submerged Lands Act.[59]

The Congress had no need to define inland waters in the Submerged Lands Act. The line had been previously marked by suitable bearings or ranges with light houses, buoys, or coastal objects to divide the high seas from inland waters, or where not marked, the authority existed.

So this legislation neither defined "inland waters" nor provided for the definition of the term. That act, however, did convey submerged lands to the coastal states to a minimum of three miles from their

[59]67 Stat. 29; 43 U.S.C. 1301-1315 (1953).

"coast line," and then defined "coast line" as the "line marking the seaward limit of inland waters." [60] On the other hand, the Inland Water Line Act specifically provided for the definition of the term "inland waters" by directing that a line be designated and defined dividing the "inland waters" from the "high seas." [61] Both clearly relate to the same thing—in fact their entire application hinges on the same thing—the scope and extent of "inland waters."

The applicability of the inland rules legislation was dependent on and governed by the scope or location of "inland waters" as understood in a jurisdictional and territorial sense. Likewise, the scope of the Submerged Lands Act conveyance was to be governed by the extent or location of inland waters as understood in a jurisdictional and territorial sense. Thus, clearly, there exists a connexity—indeed an identity—of intended scope of the two statutes. This relationship, coupled with the phrasing of the Submerged Lands Act, appears under the case law to be sufficient justification for an application of the doctrine of pari materia.[62]

[60] 67 Stat. 29, Sec. 2 (c) ; 43 U.S.C. 1301 et seq.

[61] 28 Stat. 672, 33 U.S.C. 151.

[62] *United States v. Congress of Industrial Organ.*, 335 U.S. 106, (D.C. App. 1948) ; *Great Northern Ry. v. United States*, 315 U.S. 262; *Sanford's Estate v. Commissioner of Internal Revenue*, 308 U.S. 39, rehearing denied, 308 U.S. 637; *Greenport Basin & Construction Co. v. United States*, 260 U.S. 512; *United States v. Korpan*, 237 F.2d 676 (7th Cir. 1956), reversed on other grounds, 354 U.S. 262; *Application of Martin*, 195 F.2d 303 (CCPA), Cert. Den.; *Martin v. Commissioner of Patents*, 344 U.S. 824; *Northern Pacific Ry. Co. v. United States*, 156 F.2d 346 (7th Cir. 1946), affirmed, 330 U.S. 248; *McCarthy v. Pennsylvania R. R. Co.*, 156 F.2d 877 (CCA Ind. 1946),

The case of *Martin v. Commissioner of Patents*, 195 F.2d 303, Cert. Den. 344 U.S. 824, lends a great deal of support to the above proposition. There an act dealing specifically with the extensions of patents made reference to service in the "military or naval forces" during World War II. In determining that this phrase did not encompass service in the Merchant Marine, the Court looked to the Soliders' and Sailors' Relief Act of 1940, the Internal Revenue Code, and the National Emergency and War Shipping Acts for definitions of "military or naval forces." The subject matters of none of these acts were the same, nor were their purposes. But the *scope* of the act in each case depended on a definition of an identical phrase, and in determining this definition for the patent case, the other statutes were examined and their definitions given great weight.

Nor is it necessary in order to hold statutes in pari materia, that they be contemporaneous. Acts both prior and subsequent to the one in question can be considered.[63] However, it would seem that various Acts—*See* Act of July 17, 1939, 53 Stat. 1049, 46 U.S.C. 224a(12); Act of August 27, 1935, 49 Stat. 888, 46 U.S.C. 88; Act of June 20, 1936, 49 Stat. 1544-45, 46 U.S.C. 367—show repeated usage which strengthens the applicability of the definition here.

The California case, or decision, cannot be used

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Cert. denied, 329 U.S. 812; *United States v. Carter*, 171 F.2d 530 (5th Cir. 1948).

[63]*Boston Sand and Gravel Co., v. United States*, 278 U.S. 41; *Vane v. Newcombe*, 132 U.S. 220; *United States v. Carter*, 171 F. 2d 530 (5th Cir. 1948).

against Louisiana's lawful claim to its *coast line* or *outer limits* of its inland waters.

It is noted that in the *California* case both parties specifically denied any reliance on the inland water line.[64] However, this Court had previously had occasion to point out the effect of the "inland water line" in *The Delaware*, 161 U.S. 459. *The Delaware* held that the Secretary of the Treasury had "designated and defined the dividing line between the high seas and the rivers, harbors and inland waters of New York," [65] and that the waters landward of that line were "as much a part of the inland waters of the United States within the meaning of this Act as the harbor within the entrance" to New York Harbor.[66] Although the facts involved in the *Delaware* case occurred before the line was drawn, the line, having been drawn before the Court's decision, was adopted as the decisional basis of the location of the seaward limit of inland waters before the line,[67] and it was said that the line would

[64] *United States v. California*, 381 U.S. 139, Transcript of Oral Argument, pp. 149, 150.

Justice Brennan: Now, I have forgotten—maybe the briefs cover this provision of Title 33 under which the Commandant of the Coast Guard is required to fix the lines dividing the high seas from inland waters.

Do you rely on that at all?

Mr. Cox: Oh, no. And neither does California.

Justice Brennan: . . . But you don't rely at all on the definition of inland waters (,) on Congressional definition in another statute?

Mr. Cox: No. No. . . .

[65] 161 U.S. at 464. This was done under the 1895 Act.

[66] 161 U.S. at 463.

[67] 161 U.S. at 464.

define inland waters in the future.[68] It is the meaning of Congress that must be imputed to the term "inland waters"; and this has been enunciated by the Court in *The Delaware*.

While it is the Congressional intent which is important, this court has indicated in the California decision that it was the intent of Congress for the Court to follow then available decisions by this Court on the subject of the limits of Inland Waters. It was only because this Court did not have pointed out to it a pre-existing judicial decision by its pertaining to the limits of Inland Waters that the court ventured to "flesh" out the meaning through resort to international law and the Geneva Convention. That is, the Court considered post Submerged Land Act judicial "fleshing" necessary because it could find no case prior to the act giving meaning to the term. Such a case exists, however,—*The Delaware*—and it should now be followed. Moreover, the foundation of the legislative history suggesting a Congressional desire for the court to follow existing case law was even more fundamentally a Congressional desire to simply use existing domestic law. Of course, statutory meanings would be controlling for statutory interpretation in the event of conflict with case law, but the two are in accord.

Therefore, the "seaward limit of inland waters" from which Louisiana's grant under the Submerged Lands Act is to be measured should be the line designated and defined by agents of the federal government

[68] 161 U.S. at 464.

pursuant to the 1895 Act and confirmed and adopted by Louisiana Act 33 of 1954 as Louisiana's coast line.

## IV. Once the Inland Water Line was Accepted and Approved by the State of Louisiana, it Could Not be Changed as a Boundary Without her Consent.

As pointed out above, the Inland Water Line around the Louisiana coast was designated and defined by the properly authorized agencies of the federal government pursuant to authority vested by the Act of February 19, 1895, as amended.[69] Such designation of the seaward limit of inland waters was accepted and approved by Louisiana by Act 33 of 1954 as her coast line[70] (Coast line is defined in the Submerged Lands Act as the "seaward limit of inland waters.") Once such a designation and definition has been made and accepted and approved by the state, the boundary cannot be changed nor the territory withdrawn from the state without the consent of the state.

As early as 1884 in the case of *Fort Leavenworth R.R. Co. v. Lowe*, 114 U.S. 525, 541, this Court made the following statement:

> And so when the questions arose as to the northeastern boundary, in Maine, between Great Britain and the United States, and negotiations were in progress for a treaty to settle the boundary, *it was deemed necessary on the part of our government to secure the cooperation and concurrence*

[69]33 U.S.C. 151.

[70]Whether any other state so accepted the line as her boundary, Louisiana does not know for certain, but, to her knowledge Louisiana is the only state which has so acted.

> *of Maine, so far as such settlement might involve a cession of her sovereignty and jurisdiction as well as title to territory claimed by her,* and of Massachusetts, so far as it might involve a cession of title to lands held by her. (Emphasis supplied.)

Then in *Geofroy v. Riggs*, 133 U.S. 258, 267 this Court said, in speaking of the Executive's treaty-making power:

> It would not be contended that it (the treaty power) extends so far as to authorize what the *Constitution forbids*, as a change in the character of the government or in that of one of the States, or a *cession of any portion of the territory of the latter without its consent.* (Emphasis supplied.)

The case of *Louisiana v. Mississippi*, 202 U.S. 1, was a boundary dispute between the two states. The state of Mississippi contended that the boundary descriptions in the Acts of Admission of the two states were conflicting and seemed to grant certain islands to both states. The Court refused to find the conflict alluded to and went even further and said:

> Congress, after the admission of Louisiana, could not take away any portion of that State and give it to the State of Mississippi. The rule, *Qui prior est tempore, patior in jure,* applied, and section 3 of Article IV of the Constitution does not permit the claims of any particular State to be prejudiced by the exercise of the power of Congress therein conferred. 202 U.S. at 40-41[71]

[71]Article IV, Section 3 of the *United States Constitution* referred to above by the Court, reads as follows:

> New States may be admitted by the Congress into this Union; but no new State shall be formed or erected with-

It was thus held that this Constitutional provision prevented the federal government from taking any property from the State of Louisiana without Louisiana's consent.[72]

And not only is there judicial authority for the above proposition; there is much legislative recognition of the fact that the federal government cannot take land from a state or change a state's boundary without the consent of the state. An early dispute between the United States and Great Britain centered on which St. Croix River was the boundary between Maine and New Brunswick.[73] When the decision of the arbitrator of this dispute was unfavorable to the United States, the Senate refused to accept and act upon his decision because it felt the United States government did not have the Constitutional authority to alter the boundaries of a state without its consent and this consent had not been forthcoming.

An even earlier example of legislative recognition of this proposition is afforded by the 1811 debates over Louisiana's entry into the Union. The West Florida Territory had been taken from Spain by the United States in 1810 and President Madison thereafter

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in the Jurisdiction of any other States; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned as well as of the Congress.

[72]*See also, Washington v. Oregon,* 211 U.S. 127; *New Mexico v. Colorado,* 267 U.S. 30.

[73]*See, generally,* notes following the Webster-Ashburton Treaty, No. 99, 4 *Miller, Treaties and Other International Acts of the United States of America* 383 *et seq.,* for a discussion of this dispute.

assured the Spanish government that negotiations would be carried on to determine whether or not the territory rightfully belonged to the United States.[74] The Territory of Orleans, which was to become Louisiana, was described in the Act proposing statehood so as to include the West Florida Territory.[75] In debating the inclusion of this territory, Representative Sheffey of Virginia objected by saying that:

> When the Executive had directed the occupation of that Territory it had given a pledge that it should be subject to further negotiations. And would gentlemen say that the Executive could convey away part of a State? Although it should be hereafter clearly proved, that the territory was not ceded, what is he bound to do? To establish a doctrine spurned by all, that the Treaty making power has a right to cede a State, or part of a State? Certainly not. 22 *Annals of Congress* 484 (1811).[76]

A more recent example of the legislative understanding of this doctrine is to be found at 99 *Cong.*

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[74] *Richardson, A Compilation of the Messages and Papers of the Presidents*, 1789-1897, 480-481 (1896).

[75] 22 *Annals of Congress*, 496 (1811).

[76] In debates upon the same subject Representative Pitkin expressed similar thoughts. He said:

> I believe it will be said by every person that we cannot, after she (Louisiana) becomes a State, alter the boundaries without her consent. 22 *Annals of Congress*, 519, (1811).

Other Congressmen expressed similar thoughts about the federal government's ceding the territory of a state. *See e.g.*, 22 *Annals of Congress*, 484, 496, 519, 522 (1811).

*Record* 2634 (1953), where Senator Cordon said, in debating the Submerged Lands Act:

> The boundaries of the States cannot be changed by Congress without the consent of the States. We cannot do anything legislatively in that field, and we have not sought to do so in this measure.

That the executive branch held an identical belief concerning the propriety of taking territory from a state or changing its boundaries without its consent, is evidenced by the Maine-Canada boundary dispute with Britain. Knowing that the federal government could not conclude a treaty ending the dispute without the agreement of any state whose boundaries would thereby be changed or who would lose territory in the process, the executive did not attempt such a settlement until the consent was obtained. This belief was stated in a letter from Secretary of State Forsyth to Sir Charles R. Vaughan in which the Secretary said:

> Under the particular structure of our political system, the Federal Government cannot alienate any portion of the territory of a State, without its consent. D.S. 6 Notes to the British Legation 18, 25 April 1835, quoted in 4 *Miller, Treaties and Other International Acts of the United States of America.*

Even though war threatened at times because of the seriousness of the dispute, the United States was adamant in its position and a settlement was not forthcoming until the affected states agreed to the loss of territory.[77]

[77] 4 *Miller, Treaties and Other International Acts of the United States of America,* 391-92.

Thus, it is clear that throughout our history all three branches of the federal government have recognized that the boundaries of a state cannot be changed nor can territory be taken from her without her consent. And this is so regardless of whether this taking from one state or the boundary change is for the benefit of another state (as was the situation in *Louisiana v. Mississippi*, 202 U.S. 1; *Washington v. Oregon*, 211 U.S. 127; and *New Mexico v. Colorado*, 267 U.S. 30) or is in some way connected with international relations or the treaty-making power (as was the case in *Fort Leavenworth R. R. Co. v. Lowe*, 114 U.S. 525; *Geofroy v. Riggs*, 133 U.S. 258; the Canada border dispute; and the dispute over the West Florida Territory when Louisiana was about to enter the Union).

Louisiana's seaward boundary was established by Louisiana Act 33 of 1954 when she accepted and approved the line drawn around her coast by the properly authorized federal agent in 1953. Louisiana has never consented to a change in this boundary and thus it should stand as designated and defined by federal agencies authorized by Congress and accepted and approved by Louisiana.

## V. Only the Inland Water Line Will be Consonant With the Express Policy of This Court Relative to the Boundary Established by the Submerged Lands Act.

This Court has before it the task of determining the proper dividing line between the rights of the United States and of the State of Louisiana to the submerged lands lying off Louisiana's shores. The resolu-

tion of this problem now centers on an interpretation and application of the Submerged Lands Act,[78] particularly that portion of the Act which establishes the "coast line" as the baseline from which to measure the grant of the Act.

This Court has recognized the need for a workable stable boundary in the *California case*, but to apply the same method there found suitable for this need would be improper under Louisiana's factual circumstances.

A. Louisiana and California Exhibit Marked Differences in Physical and Economic Coastal Conditions.

The physical difference between California's shore and the shore of Louisiana is remarkable. The California coast is lined by the Coast Range mountains for the most part, and these mountains are very close to the sea.[79] With its sand and gravel beaches,[80] stretches of rock where the mountains dip directly into the sea,[81] and its large, rocky islands,[82] the California shore is relatively stable. The few indentations along the coast have no physical complications of any material significance, being smooth and regular in shape and with few secondary indentations within them.[83]

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[78]67 Stat. 29 (1953), 43 U.S.C. 1301, et seq.

[79]*See Fletcher & Wolfe, Earth Science* 488 (4th Ed. 1959).

[80]*See Atwood, The Physiographic Provinces of North America* 493, 499 (1940).

[81]*See U.S. Department of Commerce, Coast & Geodetic Survey, United States Coast Pilot 7, Pacific Coast* (9th Ed. 1963).

[82]*See* 5 *Colliers Encyclopedia* 154 (1967).

[83]*Ibid.*

In contrast to the smooth and stable California shore, Louisiana's shore presents a mass of complexities. The major part of the Louisiana shore is formed by the remnants of ancient deltas of the Mississippi River.[84] While the remnants of these deltaic masses are on the whole receding at a relatively rapid rate,[85] sedimentation carried by the many streams and distributaries is rapidly building the geographic coast line in other areas.[86] This is particularly true of the present deltaic area where the Mississippi River and its various distributaries carry mega-tons of sediments to the shallow waters offshore.[87] This erosion and sedimentation causes the greater portion of the shore to be highly dynamic and volatile.[88]

The probability that the Atchafalaya River has started a massive, complicated delta, ultimately extending up to 50 miles seaward is certainly a distinguishing factor by comparison to California. Unquestionably, a coast line is needed seaward of the ten or

[84] *See* Morgan & Larimore, "Changes in the Louisiana Shoreline, VIII Transactions," *Gulf Coast Association of Geological Societies* (1959), *passim. See* the map, *Ibid.*, p. 309, showing the various deltas of the Mississippi River and the rates of advance or retreat of each.

[85] *Ibid.*

[86] *Ibid.*

[87] *See* Hanna, Some Characteristics of the Coast Line of Louisiana, Memorandum prepared for use of Attorney General of Louisiana in appearing at hearings at New Orleans, Louisiana, Dec. 10 & 11, 1952, by House Subcommittee on Inland Water Boundaries, on H. Res. 676, Cf. Morgan, "Mudlumps at the Mouths of the Mississippi River," in *Geological Bulletin No. 35, Louisiana Geological Survey, Dept. of Conservation*, p. 11 (1961), hereinafter cited as *Morgan, Mudlumps.*

[88] *Hanna*, pp. 2-4.

twenty miles this will project in the next two or three decades, to avoid constant relitigation of hundreds of square miles as the land marches seaward, in complex prongs and passes. *See* Appendix, on coastal dynamics.

The many indentations along the Louisiana shore are amazingly complex. There are indentations within the indentations, islands present at the mouth of, outside, and inside the indentations, and bodies of water connecting adjacent indentations. Along certain portions of the shore the indentations are rapidly filling in or are being made deeper by the vagaries of changing accretion and erosion.

Many of the islands off the Louisiana shore are unique in all the world. The Mississippi River outlets, for example, are characterized by the geological phenomena of mudlump-islands or low-tide elevations which can be quite large and permanent but that sometimes appear and disappear spontaneously,[89] and even quite rapidly. Many other islands change constantly according to the vagaries of wind and wave.[90]

Unlike the Pacific coast, the Louisiana shore is subject to major storm action. In the years, 1964 and

[89]*See Morgan, Mudlumps*, pp. 1-24, 55-59, 97-100.

[90]*See, e.g.*, In the Matter of the Perpetuation of the Testimony of Dr. James P. Morgan, 12 December, 1955, p. 35, hereinafter cited as Morgan Deposition, where Dr. Morgan says of the Isles Dernieres:

> These islands that flank the coast in this region are low, sandy islands. They are subject to breaching by any major storm, and I have been on the Isles Dernieres chain two or three times, and every time I go there, they are somewhat different because waves have cut gaps in them or filled in the gaps with sands, or something else.

1965, two major hurricanes struck the Louisiana coast with such force that a great portion of the geographic shore line was changed.[91] Minor storms, wind and wave action also cut into the shore, building new indentations and closing others. "Even a shift in the wind may bring land out of the water or submerge it." [92] The Louisiana coast, being composed of soft, silt-like material for the most part, is more subject to these natural forces than is the hard, rocky coast of California.

The United States is fully aware of the intricacy of the Louisiana shore and the hazards of the sea and the winds borne by the State of Louisiana. In its Memorandum filed with this Court on March 5, 1956 (*United States v. Louisiana*, Memorandum for the United States in reply to Louisiana's Brief in Opposition to Motion for Leave to File Complaint), pp 9-10, the United States comments:

> The Louisiana *coast* line is an extraordinarily complicated one. Some idea of its complexity can be gained from the fact that while the "general coast line" of the State is only 397 miles long, the detailed tidal *shoreline* has a length of 7,721 miles. *World Almanac* (1955), p. 258. [The same source indicates that while California's general coast line is twice as long as Louisiana's, its detailed tidal *shoreline* is less than half as long as

[91] *See Reports of Corps of Engineers, New Orleans District, on Hurricane Hilda*, 3-5 October 1964, Ser. No. 327, May 1966, and on *Hurricane Betsy*, 8-11 September 1965, Ser. No. 2463, November 1965, and Morgan's study of the morphological effects of Audrey, discussed in Appendix A re coastal dynamics.

[92] *See Hanna*, pp. 2-4 (*see also* Opinion of Solicitor General Cox, 71 *Interior Decisions* 22, 37 (1963).

> Louisiana's.] In addition to its involved configuration, it presents through much of its length a contour so nearly level that even minor wind variations can cause very substantial differences in the point to which the tide retreats. Finally, the *shore line* is not a stable one, but is subject through most of its length tc rapid and substantial changes. . . . *A judicial inquiry into the precise location of the entire shoreline might be stretched to require many years for completion.* (Emphasis added.)

As the physical characteristics of the Louisiana coast are much more complex than the geography of the California coast, so is the economic impact of Louisiana waters much more significant than that of California's offshore submerged lands.

Any great degree of uncertainty in ownership of the submerged lands off Louisiana will have a tremendous adverse impact on the oil and gas industry in this area. Because of this impact and because of the magnitude of the interests of the industry and of the federal and state governments, the decision of this Court delineating federal rights from state rights should forever decide the ownership of the offshore lands. The Court considered and applied this policy when it decided the case of *United States v. California;* Louisiana asks that it do the same today, but a shoreline determined coast line would not serve that policy in Louisiana because our shore line is ultra dynamic and ambulatory. Under Louisiana circumstances the best and most workable definition of inland waters is that afforded by the Inland Water Line.

Evidence of the inland character and of the geological, hydrological, and economic significance of the waters off the shore of Louisiana and within the Inland Water Line is afforded by the August, 1967, controversy relative to the proposal to move the Inland Water Line closer to shore. Of course, if such a move had been effected, it would not have been determinative of Louisiana's coast line since after the State of Louisiana had accepted and approved the line as its coast line, it could not be changed as a boundary base line without her consent. At the Coast Guard hearings on the proposed change conducted in Louisiana in August, 1967, abundant testimony was received concerning varied factors relating to the inland waters such as the extremely shallow draft of the waters, making them very susceptible to oyster farming, shrimping, fishing, and other shore-related activities; the necessity for controlling and protecting the entrances and approaches to our nation's dominant waterway; the difficulties that would result to fishermen, shrimpers, crew-boat operators, and others who would have to effect changes that would often be extensive and expensive in order to comply with safety and navigational rules; the dynamic and unstable nature of the shoreline and the number and varied character of the bays and indentations along the shoreline, all of which would make a shoreward change in the Inland Water Line unwise and undesirable; and many other similar factors.[93] The fact that this testi-

[93] *See* transcript of testimony taken at hearings, especially hearings conducted at Morgan City, Louisiana, and New Orleans, Louisiana, excerpted in Appendix E.

mony was so strong and so abundant and that the Coast Guard subsequently decided not to move the line shoreward goes far in showing the true inland character of the waters in question.[94]

B. Only the Inland Water Line Will Fulfill the Requirement for a Definite and Certain Submerged Lands Act Boundary.

In defining the term "coast line" for the purely domestic purposes of the Submerged Lands Act, this Court was of the opinion that:

> [W]e best fill our responsibility of giving content to the words which Congress employed by adopting the best and most workable definitions available.[95]

The "best and most workable definitions" were, to the Court, those definitions which would provide a boundary that would "fulfill the requirements of definiteness and stability which should attend any congressional grant of property rights belonging to the United States," [96] and a boundary which, while subject to minor changes caused by natural or artificial means,[97] would not be subject to wholesale changes.[98]

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[94]This Court, in the *California* case, has indicated that the character and depth of the waters are to be considered in determining whether they are inland waters when, in describing the Chandeleur and Breton Sounds as clearly "inland waters" the Court said: "In fact both are so shallow as to not be readily navigable." 381 U.S. 139, 171.

[95]*United States v. California*, 381 U.S. 139, 165.

[96]381 U.S. at 166, 167.

[97]381 U.S. at 166, 167; decree, 382 U.S. 448, para, 2 (b).

[98]381 U.S. at 166-167, 176-177.

In the *California* case the legal principles that most nearly satisfied this express policy were those found in the Convention on the Territorial Sea and the Contiguous Zone, T.I.A.S. No. 5639. The Court adopted them "for purposes of the Submerged Lands Act," [99] noting that "the comprehensiveness of the Convention provides answers to many of the lesser problems related to coastlines which, absent the Convention, would be most troublesome," [100] and finding that by use of the Convention "many of the subsidiary issues before us fall into place." [101]

The few isolated spots off the California shores where an Inland Water Line had been designated were far shoreward of the California claims, and California had not consented to these lines by an acceptance and approval, as did the Louisiana legislature.

All this was so because of the relatively simple and uncomplicated geographical configuration to which the definitions were to be applied. Because the California shore line smooth and normal, an application of the definitions of the Convention was simple and mechanical. Article 3 of the Convention, by its express terms, established the coast line of the greater portion of California;[102] Articles 7 and 8, by their terms, determined the proper coast line where the shore was indented,[103] or where harbor works were present.[104] Even the

[99]381 U.S. at 165.
[100]381 U.S. at 165.
[101]381 U.S. at 167.
[102]381 U.S. at 175, 176.
[103]381 U.S. at 169, 170.
[104]381 U.S. at 175.

troublesome contention concerning California's "overall unit area" was met by reference to the permissive language of Article 4 of the Convention.[105] Further, by freezing the legal definitions of "coast line" in terms of the Convention,[106] the Court effectively prevented wholesale changes in California's coast line, since the physical shore line of California is relatively stable. Dealing with the situation in which artificial changes to the mainland changed the line the Court remarked, 381 U.S. at 177:

> The Consideration which led us to reject the possibility of wholesale changes in the location of the line of inland waters caused by future changes in international law . . . do not apply with force to the *relatively slight* and sporadic changes which can be brought about artificially. (Emphasis supplied.)

The same statement could be made with respect to natural changes in the shore line.

The Geneva Convention definitions were thus suited to the policy considerations of this Court in the *California* case. They are not so suited with respect to Louisiana geographically. Nor are they suited legally. This is emphatically so because Louisiana's coast line was designated and defined by the United States under applicable Acts of Congress, as shown on large scale charts, duly publicized, and the Louisiana Legislature accepted and approved said coast line in detail by Act 33 of 1954.

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[105] 381 U.S. at 167, 168.

[106] 381 U.S. at 166, 167.

Even in the *California* case, the definitions of the Convention did not provide all of the solutions to the problems of determining California's coast line. *See, e.g.*, 381 U.S. at 170-72, relative to the "fictitious bay" contention of California, and 381 U.S. at 176, 177, relative to the question whether artificial changes modified the coast line. In the Louisiana situation, the definitions of the Convention will *not* answer *most* of the questions involved in determining Louisiana's coast line. Many complex problems raised by the Convention or by other principles would have to be adjudicated before Louisiana's coast line could be finally determined. Each segment of the Louisiana coastal area raises distinct and separate questions requiring separate and distinct decisions. Unlike the situation in the *California* case, determination of Louisiana's coast line, absent the recognition of the Inland Water Line, would involve investigation and argument concerning almost the entire coastal area on virtually a mile by mile basis. We submit that a set of definitions that raises more problems than it solves is not the best and most workable set of definitions for determining a coast line. One of the considerations which led this Court to adopt the definitions of the Convention with respect to the State of California was that "the comprehensiveness of the Convention provides answers to many of the lesser problems related to coast lines which, absent the Convention, would be most troublesome." [107] This consideration is not present in the Louisiana case.

Further, even if a coast line based on the Conven-

[107] 381 U.S. at 165.

tion could be determined, Louisiana submits the results would be productive of such confusion and uncertainty and so harmful to the orderly development of the resources of the Continental Shelf, that the application of the Convention would be discordant with the express policy of this Court in favor of a definite and certain boundary and opposed to wholesale changes in that boundary.

Furthermore, the United States, by action of its Congress and Supreme Court, have held that a State's boundary cannot be changed without the consent of its legislature and no state boundary change can be affected by treaty—such as the Convention.

This Court has held that the coast line which is established will be subject to modification by natural or artificial means[108] and our opponent has admitted that a Geneva Convention-determined coast line will be ambulatory in fact.[109] In California there is little possibility of a physically ambulatory boundary, at least one whose changes are significant; accretion and erosion are minor and there is very little severe storm action on the Pacific coast. Neither does the California coast have the nation's leading river system depositing daily, countless tons of sedimentation in offshore waters so shallow as to be subject to the rapid build-up of

[108] *United States v. California*, decree, 382 U.S. 448, para. 2(b); *United States v. Louisiana, et al*, supplemental decree, 382 U.S. 288, para. 3.

[109] *See* Motion by the United States for Entry of a Supplemental Decree (No. 1), Proposed Supplemental Decree, and Memorandum in Support of Motion, *United States v. Louisiana, et al*, No. 9, Original, October Term, 1965, pp. 18-19.

islands and low-tide elevations. In Louisiana, however, the physical ambulation of a Convention-based coast line will be so great and so swift that the boundary of Louisiana's submerged lands rights will be subject to instantaneous and enormous changes, with harmful consequences to both Louisiana and the United States, to the affected industries, and to the development needs of the nation.

The peculiar geography of the Louisiana shore has previously been sketched; it indicates that many and rapid changes occur to the physical shore line and shore configurations of Louisiana. If the coast line is determined by the Convention the boundary of Louisiana would be subject to the same changes. For example, the Convention, Article 10, provides that an island has a 3-mile belt of its own, and the Court has expressly adopted that article in determining California's boundary.[110] If the Louisiana coast line is determined by this article, the appearance or disappearance of a single island could affect the ownership of over 39,000 acres of submerged lands. Even more land could change ownership if a low-tide elevation were within the territorial sea of the island and therefore was also part of the baseline under the provision of Article 11 of the Convention. Further, the creation or destruction of an indentation containing waters sufficient in area to be termed inland waters under Article 7 of the Convention could affect the ownership of many more thousands of acres. Other significant changes could be men-

[110] *United States v. State of California*, decree, 382 U.S. 448, para. 2(a).

tioned, but those noted should make obvious the impact on ownership and on the boundary of the Submerged Lands Act grant resulting from a Geneva Convention-determined coast line. Two additional harmful consequences should be noted.

First, efforts to determine the extent of Louisiana's title to submerged lands will be interminable. The interests of both parties are so intense that in order to protect them they will feel compelled to examine the coast line after each storm or hurricane, after each flood of the Mississippi River, and after each season during which great coastline changes are likely to occur. Costly and time-consuming surveys will have to be conducted when either party deems that its interest requires them; it is foreseeable that almost continuous litigation will be necessary to establish new ownership boundary lines.

Second, wholesale changes in the federal-state ownership boundary will have an enormously harmful impact on the development of the resources underlying the Gulf of Mexico. Individuals and companies desiring to develop these resources will never be sure that a lease or grant of a certain area will be valid a year or even a day after the lease or grant is made.[111] No one

[111]As to the importance of a stable situation in which orderly development and production can take place *see* the recent July, 1968 report of the National Petroleum Council. Stability in offshore development and production is even more important than is normally the case with mineral production, because of the very large sums of capital necessary to undertake such activities. If the coast line is not stable,

would take title from the state or from the United States without a minute inspection of the coast to determine who then owned the lands and who would be likely to own them in the future.[112] At page 61, footnote 12, of their counter-motion the federal government attempts to minimize the importance of a stable and unchanging coast line by making vague references to their intention to "seek concurrent legislation" to stabilize the coast line. No such proposal has yet been made or even considered so far as the state knows, and the problems involved in formulating legislation that would satisfy both the federal government and the state may well be insurmountable. The State of Louisiana is not in agreement that concurrent legislation is the solution to the problem of an unstable coast line. The recognition of Louisiana's true and proper coast line—the Inland Water Line—removes the problem of instability and endless litigation, against which Congress admonished the United States.

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the federal-state ownership boundary line will not be stable and potential lease problems become apparent. These problems, in turn, tend to discourage the investment of capital and could cause the stagnation of development activity, especially in areas close to the boundary line.

[112]The problem of determining ownership so far has been largely avoided only by an agreement between Louisiana and the United States providing for the lease of the disputed zones regardless of ownership, the revenues from which are deposited with the Secretary of the Treasury until ownership is determined. This agreement, however, will terminate when ownership of the disputed areas is determined. *See, generally,* Lewis, "The State-Federal Interim Agreement Concerning Offshore Leasing and Operations," 33 *Tulane Law Review* 331 (1959). A buffer zone it provided for safe investment will go.

Appendix A, attached hereto develops considerable scientific detail relating to the dynamics of particular locales. It demonstrates with greater particularity how and where hundreds of square miles of coastal waters would be subject to the probability of wholesale, dramatic changes in ownership, if the coast line is determined by shore line configurations. Some of this potential is for sudden change: *e.g.*, the frequent hurricanes and the peculiar susceptibility to hurricane change, the two mile mud arcs hurled up by the sea on our western shores; the effects of stream and river crevassing; the mud lump island phenomena; islands with continually varying elevations; and the ever increasing works of man. Some of this potential is for relatively gradual, but still frequent and dramatic change; *e.g.*, the great mud flats of the western coastal sector; the probability of a new, major delta building out from the Atchafalaya; the peculiar processes of the unique Mississippi "bird foot" delta, with its ever extending mouths and ephemeral cycles of retreat and growth that continually modify the geometrics of its indentations; the moving islands; the ecologically related changes, which occur as the aftermath of artificial works, storms, or other natural phenomena. Even these relatively gradual propensities for change portend frequent litigation, if shoreline configurations are permitted to control the location of the coast line; *e.g.*, as the 80 or more square miles created by "The Jump" crevasse erode and submerge, West Bay will progressively enlarge, with its northern headland probably moving 10 to 12 miles to the northwest over the next

20 to 30 years. If the headlands of the indentation determine the location of the coast line, litigation can be expected every few years as the closing line progressively lengthens and marches seaward to add scores of square miles to the area behind the closing line.[113] This is but one of many locales with great propensity for change.

Incidentally, this also illustrates that in spite of shoreline retreat at many places, the net effect of retreat and advance will ultimately cause much of the area which is encompassed by the Inland Water Line to unquestionably be inland waters even through resort to shoreline configurations. This is true even for major areas of shoreline retreat.[114]

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[113]Over the past 300 years, the area has gone through three complete cycles of land building, followed by submergence, and it is now at the final portion of the active retreat phase, as more fully shown in Appendix A. Since the inner portions of the land are contracting quite rapidly and the direction of the submerged trend is generally from the south to the north, West Bay's northwardly expanding configurations should continue to meet the semi-circle test, as it merges with expanding lakes and ponds forming in the marsh to the north. The seaward movement of the closing line of the bay would result from the net westward movement of the northern headland, due to the angle of the disappearing shoreline, although there might be transitory phases of temporary inward movement of the line.

[114]As with West Bay, the retreat of the peninsula which partly divided the Delta's Garden Island Bay and Redfish Bay (which led the Justice Department to abandon its contention that these water areas should be treated as a separate embayment, to justify a more inward closing line) is another illustration of how retreat of land may cause unquestioned recognition of a more outward extend of inland waters. Expansion of a shoreline determined coast line can be expected from a

The former Solicitor General of the United States has given the factors of instability and the probability of wholesale changes great weight in interpreting the Submerged Lands Act. In deciding that certain islands formed after Louisiana was admitted to the union were granted by the Submerged Lands Act to the state,[115] Solicitor General Archibald Cox pointed to the serious practical consequences that would result if the contrary view were taken. He remarked,[116] that any distinction between different islands based on the time of their formation "would in fact give rise to expensive and enormously time-consuming litigation impairing the value of the lands affected," and he pointed out that his decision would avoid or minimize the practical problems.[117]

This Court sought in the *California* case to fulfill the requirements of definiteness and stability which should attend any Congressional grant of property

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number of other phenomena. The passes of the great river are building ever outward. Scores of new mudlump islands can be expected seaward of the Mississippi passes. At the mouth of the Lower Atchafalaya, we can expect a great new deltaic growth, comparable to the sedimentary land building this river accomplished in the last several decades. (Increased flow of the Atchafalaya, in recent decades has virtually filled its former lake system some thirty miles long by an average three or four miles wide.) East Bay, if the Court does not recognize it as inland water, will unquestionably attain that character when anticipated changes in configuration cause it to satisfy the semi-circle test. These and other similar facts are supported in Appendix A.

[115] 71 *Interior Decisions* 22 (1963).

[116] *Id.* at 34.

[117] *See id.* at 34-38.

rights. Clearly, application of the definitions of the Convention to a determination of the coast line of Louisiana will not fullfill these requirements. This Court expressed a desire to avoid wholesale changes in the grant of the Submerged Lands Act. An application of the definitions of the Convention to the Louisiana coast is obviously inconsistent with this policy.[118]

The desire of Congress to have the Submerged Lands Act so interpreted as to effectively bring an end to the confusion, chaos, inequities and injustices associated with the instability of state-federal maritime boundaries is amply demonstrated by the legislative history. The major purpose of the act was to "resolve this needless controversy at the earliest possible date and bring to an end, once and for all, the confusion, chaos, inequities and injustices." [119]

The report pointed out that development of offshore petroleum was hindered by conflict over owner-

[118]That the definition of Louisiana's coast line should be different than the definition of California's coast line has been recognized by at least one committee of Congress. The House Committee on Interior and Insular Affairs, reporting pursuant to *H. Res.* 676, 82nd Cong., 2d Sess., on its "Investigation and Study of the Seaward Boundaries of the United States," *H.R. Rep. No.* 2515, 82nd Cong., 2d Sess., (1953), stated, at p. 19:

> There is a startling difference between the shore and coast of Louisiana and Florida on the one hand and that of Texas and California on the other hand. *To say that these contrasting coastal areas should be treated exactly alike with reference to the definition of inland waters would ignore geographical factors that are wholly different.*

[119]*H. R. Rep.* No. 215, at pp. 12-13, 83d Cong. 1st Sess.

ship and there was a need to correct this condition:

> This will be accomplished by H.R. 4484, which would bring about the immediate resumption of oil and gas operations on the submerged lands, and would finally and *completely settle all issues* between the United States and the States and their lessees.[120]

In the House Judiciary Committee report it was further stated:

> All agreed that confusion, if not chaos, presently exists and, in the absence of Congressional action will become more pronounced and vexatious.[121]

The Committee further stated:

> The committee deems it imperative that Congress take action at the earliest possible date to clarify the endless confusion and multitude of problems resulting from the California decision, and thereby bring to a speedy termination this whole controversy. Otherwise inequities, injustices, vexatious and interminable litigation, and the retardment of the much-needed development of the resources in these lands will inevitably result.[122]

Especially, with regard to the problems of coast line determination and the contentions now made by Louisiana that rules developed for California circumstances are not to be applied to Louisiana coast line problems, we think the following observation of the Committee most noteworthy.

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[120]Ibid at 14.

[121]Id. at 32.

[122]Id. at 37.

If the California decision is applicable to the entire coast line of the United States, as claimed by the Department of Justice, litigation would be interminable.[123]

[123]Id. at 41. Numerous similar statements can be found in Senate legislative history, but further citation will be reserved for reply in the event the United States denies the Congressional policies quoted above.